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Sixth Edition

CRIMINAL
[CRIMJIG]

Chapters 1–16

2020–2021 Pocket Part

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MINNESOTA DISTRICT JUDGES ASSOCIATION
COMMITTEE ON CRIMINAL JURY
INSTRUCTION GUIDES

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Reporter

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2020–2021 POCKET PART HIGHLIGHTS

The 2020–2021 pocket part to the Sixth Edition of the Criminal Jury Instruction Guides includes significant changes and updates. These include added Comments on the receipt of relationship testimony in domestic abuse cases, clarifying the instruction on liability for the crimes of another, clarifying the definitions of "force" and "coercion" in sex crimes. Several instructions were amended as the result of legislative changes to the law, including criminal sexual conduct with an underage victim in several degrees and sex crimes committed by various public employees and massage and other body workers. The pocket part also addresses legislative changes to harassment and stalking laws and sexual abuse of patients, clients, and residents of care facilities. Surreptitious intrusion instructions have been amended in response to legislative changes, including new instructions on surreptitious intrusion with sexual intent regarding a minor.

Most significantly, this pocket part includes the complete rewrite and renumbering of the instructions on self-defense and the use of force.

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PREFACE

This pocket part to the Minnesota Jury Instruction Guides—Criminal (CRIMJIG), Sixth Edition, has been prepared by the Minnesota District Judges Association Committee on Criminal Jury Instructions, Stephen E. Forestell, Esq., Reporter. It reflects current case law of the Minnesota Supreme Court, Minnesota Court of Appeals, and the Minnesota Legislature through April 2020.

Stephen E. Forestell
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A. GENERAL INSTRUCTIONS TO THE JURY

CHAPTER 1

INSTRUCTIONS TO THE JURY BEFORE TRIAL

CRIMJIG 1.01

INSTRUCTIONS TO THE JURY PANEL BEFORE EMPANELMENT

Replace current Jury Instruction with the following text and Comments:

You have been summoned to the District Court of ____ County today for the purpose of selecting a jury to try a criminal case. My name is Judge ____.

It is important that you be able to see what is happening here and to be able to hear the questions being asked. If any of you have difficulty hearing or understanding, please let me know now so that we can make arrangements to help you. Does anyone have difficulty hearing or seeing and need any assistance? Does anyone have any trouble understanding what I am saying?

[Panel sworn and seated]

Again, this is a criminal case. A complaint (an indictment) has been filed with this court that alleges: [The complaint or indictment may be read or summarized at the court's discretion.] The mere fact that the defendant (may have been arrested) (has been charged by (indictment)

(complaint)) (or) (has been brought before the court by the ordinary process of the law) should not be viewed by you as evidence of or in any suggesting the defendant's guilt.

To this complaint (indictment) the defendant, ——, has pled not guilty. This plea denies the charges and places upon the State of Minnesota the burden of providing the defendant's guilt beyond a reasonable doubt.

The State is represented by ——. Please rise, ——. The defendant is represented by ——. Please rise, ——. Would the defendant please rise?

Some general rules of law apply in a criminal case. I will give you those rules now. In the questioning that will take place in a few minutes, you may be asked whether you will accept and follow those rules of law, and you should have these instructions in mind when you answer those questions.

The defendant is presumed innocent. In order for you to find the defendant guilty, the State must prove guilt. The defendant does not have to call witnesses, introduce evidence, ask questions, or otherwise prove (his) (her) innocence. The presumption of innocence remains with the defendant unless and until the defendant has been proven guilty beyond a reasonable doubt by evidence admitted in this trial.

There may be times during jury selection and during trial that we take a break or recess. During such times do not discuss this case with other jury members; you will have plenty of time to do this at the end of the trial.

Do not talk to anyone involved in this case, the defendant, the lawyers, or the witnesses.

If anyone tries to discuss this case with you outside the courtroom, report this to me or to other court personnel, who will bring it to my attention.

During breaks, do not talk to your family, friends, or others about the case. You may tell them you are a juror on a criminal case and that is all that you should tell them. Do not report your experiences as a juror while the trial and deliberations are going on. Do not e-mail, blog, tweet, text or post anything to your Facebook, Twitter, or other social networking sites about this trial. Do not visit any "chat rooms" where this case may be discussed.

Do not read or listen to news reports about the case.

Do not do your own investigation. Do not ask people about this case. Do not visit any of the locations mentioned in the trial. Do not research anything about the case by means of written, print, electronic or Internet media. Do not research on the Internet or otherwise, anything or anyone associated with this case. This includes the law, the issues of the case, evidence, parties, witnesses, lawyers, or any other individual associated with the case.

If you do not follow these instructions, you may jeopardize the trial. This may require the whole trial to be redone and we will have to start over.

To ensure both the defendant and the State receive a fair trial by an impartial jury, it will be necessary for me and for the counsel for each party to ask you certain questions that you must answer under oath. Please do not take offense at any question you are asked. Your contribution to this important and serious matter is best assured by your honest answers to those questions. Some of you who are called to be questioned will be excused from serving on the jury. If you are excused, it does not mean that anyone doubts that you are a fair person.

We will now begin the juror selection process.

[Names of appropriate number of prospective jurors are selected according whatever procedure is followed.]

[When your name is called, please come forward and take your seat as directed. If your name is mispronounced, we apologize and ask that you state the correct pronunciation as you come forward.]

Your contribution to the important and serious matter at hand is best assured by your full and free answers to the questions asked during the jury selection process. It is critical that your answers be honest and truthful.

I will ask you questions about your qualifications to sit as jurors in this case. When I am done, the attorneys will ask additional questions. I hope that you will not take offense at any question you may be asked. Some of you will be excused from serving on this jury. If you are excused, it does not mean that anyone doubts that you are a fair person.

Those of you not yet called are asked to listen closely to all the proceedings until a jury is finally empanelled. This is because you might be called upon to replace a potential juror who has been excused. It will save time if we do not have to repeat all the questions and you are prepared to offer your answers.

If your answer to any of the questions is "yes," please raise your hand. If you would have difficulty responding to a particular question or if your answer to any question by me or the attorneys would be personal or sensitive or have an adverse effect upon another juror, please let me know before answering and you can answer outside the presence of the other jurors.[1]

In answering questions, be as candid and truthful as possible. We are not trying to pry unnecessarily into your personal lives. We are merely seeking information to select a fair and impartial jury. We all have attitudes, beliefs, and life experiences that may be important.

1. Would anyone have difficulty accepting or following the rules of law that:
    a. The defendant is presumed to be innocent.

b. The state has the burden of proof.

c. The state must prove [the] [each] charge beyond a reasonable doubt.

d. The defendant does not have to prove (his) (her) innocence.

2. Do any of you know any of the following people who may be called to testify in this case or whose names may be mentioned[2] in this case? Please listen carefully. Please let me know by raising your hand whether you know any of these people or are related to them. [We may then ask you further questions about your knowledge or relationship.] The names are:

[Court reads list]

3. Do any of you know any of the parties I have introduced, including the prosecuting attorney, the defendant, the defense attorney, or any of the names I have just read to you?

4. Do any of you know any of the other jurors who are here today?

5. Are any of you presently involved in any matter where the (County) (City) Attorney's office is also involved? Have any of you been so involved in the past? Do any of you have an ongoing relationship with that office?

6. Have any of you heard or read anything regarding the alleged incident that is the subject matter of this trial? Are you familiar with the location of the (alleged) incident(s)?

This trial is expected to last — days. Normally, the trial will begin at — in the morning and continue until —. We will then recess for lunch and reconvene the trial at —. We will recess for the day at —. There will be a — minute mid-morning and mid-afternoon break.

7. Does anyone:

   a. Have any physical problem that would prevent or make difficult service as a juror here today?

   b. Have a pressing personal or business concern that would make it hard to give this case your full attention?

8. I will now ask some questions concerning you, your family, and anyone close to you. I remind you that if you would prefer to answer a particular question out of the presence of the other jurors,[3] let me know by raising your hand.

   a. Have you, a member of your family, or anyone close to you ever testified in any court case?

   b. Have you, a member of your family, or anyone close to you ever been accused of a crime (other than a minor non-alcohol related traffic violation, that is parking or traffic tickets)? A DWI is not a minor traffic violation.

   c. Have you, a member of your family, or anyone close to you ever been the victim of or witness to a crime?

If yes, who, when, where, type of crime, arrest, disposition, satisfied?

9. Have you ever served on a jury or a grand jury before?

   a. When and where?

   b. What type of case?

   c. Did you reach a verdict? [Do not allow attorneys to ask what the verdict was.]

10. Are you related to, close to, or acquainted with anyone who works in the field of criminal justice or

law enforcement, such as a police officer, attorney, correctional officer, probation officer, judge, investigator, or similar occupation?

11. Have you ever received law enforcement training, including training in the military?

12. Have you ever had experience as a law enforcement officer?

13. Do you feel that you should automatically accept or reject the testimony of a police officer just because they are a police officer?

14. Is there anything about the nature of the charge(s) in this case which causes you to have some doubt as to whether you could give both sides a fair and impartial trial?

[15. Optional: Photos and videos. Because of the nature of the charges you may be asked to view photographs or videos that are of a graphic nature, such as autopsy or crime scene photos or videos; would anyone have difficulty viewing such photos or videos?]

16. Do you understand that, if selected as a juror, each of you must decide this case solely on the evidence produced in court and the law as I give it to you, and not on the basis of bias, passion, prejudice, or sympathy?

17. Do you understand that you must follow the law as I give it to you, even though you think the law is, or should be, different?

[18. Optional. At this point the Court may ask any questions the attorneys have specifically requested the Court to ask, usually those of a sensitive nature that the attorneys would rather not ask.]

Members of the jury panel, I now ask each of you to take a moment and search your mind and conscience to see if there is any reason that you cannot be fair and impartial in this case.

After giving the matter some thought, are there any of you who, for whatever reason, feel that you cannot be fair and impartial in this case?

The court has no further questions; I will now turn the questioning over to the attorneys.

Members of the jury panel, as I indicated earlier, each attorney will now have an opportunity to ask you additional questions and to follow up on the answers give to my general questions. Please remember that the purpose of their questions is not to pry into your personal affairs but to determine your appropriateness as jurors in this particular case. The attorneys have been instructed not to repeat the questions I have already asked you.

[Defense counsel proceeds.]

[State proceeds.]

Members of the jury panel, at this point in the proceedings we have determined that you are all qualified to serve as jurors on this case. The attorneys are now selecting the people who will actually hear the case. You should understand that this is a process established by law and that any of you who are excused or struck as jurors should not feel slighted or offended.

[Defense and State exercise peremptory challenges and strike jurors from list.]

Members of the jury panel, the names of those of you who have been selected to sit as jurors in this case will now be read.

[Names are read.]

Those of you who have not been chosen are excused

at this time. Thank you for your time and attention. You may retrieve your belongings and leave the courthouse. The Court Administrator will call you if and when you need to return. Now, please return to the jury assembly room.

[Court waits for excused jurors to leave.]

Members of the jury panel, you have been selected to serve on this jury. As I indicated earlier, normally the trial will begin promptly at __ a.m. in the morning and continue until __. We will then recess for lunch and reconvene the trial at __p.m. We will recess for the day at __. There will be a __ minute mid-morning and mid-afternoon break.

[N.B. As a practical matter, jury should not be sworn immediately following empanelment if the trial is not to commence until the following day. This allows the court the freedom to add a panel member if something unforeseen should arise with an empanelled juror after empanelment but before trial commences.]

[Swear jury]

COMMENT

The Court of Appeals in *State v. Ritter*, 719 N.W.2d 216 (Minn. App. 2006) held that where the only witnesses for the state were law enforcement personnel, defendant's constitutional right to an impartial jury was violated when the district court prohibited him from asking prospective jurors during voir dire whether they were inclined to give more credence to the testimony of law enforcement; a limitation on discovery of possible bias toward law enforcement went to the very heart of the jurors' ability to impartially weigh the evidence presented, and it was impossible to determine whether actual prejudice occurred. Note that CRIMJIG 1.01, Question 13 raises the issue of credence without framing it as a "more credence" or "more believable" question.

See also *State v. Logan*, 535 N.W.2d 320, 324 (Minn. 1995), holding that where the district court denied the defendant's motion to strike for cause a juror who stated during voir dire that he was inclined to give greater credence to police officer testimony than to lay witness testimony. The prospective juror did not state unequivocally that he or she would follow the trial court's instructions and fairly evaluate the evidence. On that record, the Supreme Court held a bias in favor of the police to be a sufficient basis for striking a juror for cause under Minn. R.Crim. P. 26.02, subd. 5.

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[1] Any private answers must be given in front of the defendant and on the record. Minn. R. Crim. P. 26.02, subd. 4(1); *State v. Jurek*, 376 N.W.2d 233 (Minn. App. 1986); *see also State v. Benedict*, 397 N.W.2d 337 (Minn. 1986). Exclusion of the public requires specific findings of the reasons for exclusion. *See Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 104 S. Ct. 819, 78 L.Ed.2d 629 (1984) (presumption that jury selection shall be open to the public).

[2] This may include interpreters, victim advocates, spouses and family members and stand-by counsel. You may identify stand-by counsel by name, but not as stand-by counsel.

[3] *See* footnote 1.

CHAPTER 2

INSTRUCTIONS TO THE JURY DURING TRIAL

CRIMJIG 2.01

CAUTIONARY INSTRUCTION ON RECEIPT OF TESTIMONY OF OTHER CRIMES OR OCCURENCES

Replace current Jury Instruction with the following text:

You are about to hear evidence of occurrences on ________ at _____. This evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint. [This evidence is not to be used to prove the character of the defendant or that defendant acted in conformity with such character.[1]]

The defendant is not being tried for and may not be convicted of any offense(s) other than the charged offense(s). You are not to convict the defendant on the basis of occurrences on _____ at _____. To do so might result in unjust double punishment.

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[1] This phrase should be used when *Spreigl* evidence is introduced that only goes to the identity of defendant. *See* Minn. R. Evidence 404 (b). Alternatively, the court, if the defendant requests it, may give Eighth Circuit Model Criminal Jury Instruction 2.09. When the evidence is being properly admitted for more than one purpose, CRIMJIG 2.01 and CRIMJIG 3.16 are proper instructions. *See Ture v. State*, 681 N.W.2d 9 (Minn. 2004).

COMMENT

Replace the third paragraph to the Comment with the following text:

This instruction should be given upon receipt of other crime or occurrence evidence (note the exception for relationship evidence set out in CRIMJIG 2.07) and as part of the final instruction (CRIMJIG 3.16) even if it is not specifically requested. *State v. Bolte*, 530 N.W.2d 191 (Minn. 1995). In *State v. Bissell*, 368 N.W.2d 281 (Minn. 1985) the Supreme Court noted that this instruction should be given even when the defendant introduces evidence of his own prior conviction. The failure to give the instruction sua sponte constitutes plain error.

Add the following text at the end of the fourth paragraph of the Comment:

In *State v. Welle*, 870 N.W.2d 360 (Minn. 2015), the Supreme Court noted that defendant Welle's repeated false assertion of self-defense in a number of assaults were admissible as *Spreigl* evidence of modus operandi.

CRIMJIG 2.07

CAUTIONARY INSTRUCTION ON RECEIPT OF TESTIMONY OF OTHER DOMESTIC ABUSE OCCURRENCES

Replace the current Jury Instruction and Comments with the following text and Comments:

You are about to hear evidence of conduct by the defendant on ________ at _____. This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and _____ [(and) (or) other (family) (household) members] in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in the complaint.

The defendant is not being tried for and may not be convicted of any behavior other than the charged offense(s). You are not to convict the defendant on the basis of conduct on _____ at _____.

COMMENT

Minn. Stat. § 634.20.

Use CRIMJIG 2.07 during trial and CRIMJIG 3.30 at the close of trial.

The Minnesota Supreme Court in *State v. Zinski*, 927 N.W.2d 272, 278 (Minn. 2019), held that when a district court admits relationship evidence under Minn. Stat. § 634.20 over a defendant's objection that the evidence does not satisfy section 634.20, the court must *sua sponte* instruct the jurors on the proper use of such evidence unless the defendant objects to the instruction.

CRIMJIG 2.09

CAUTIONARY INSTRUCTION ON ACCOMPLICE TESTIMONY[1]

Replace current Jury Instruction with the following text, Footnotes, and Comments:

You are about to hear testimony from ________.

(________ is an accomplice of the defendant. You cannot find the defendant guilty of a crime on the basis of the accomplice's testimony unless, that testimony is corroborated.)[2]

(You will have to consider whether or not ________ is an accomplice of the defendant. If you find that (________) is an accomplice, you cannot find the defendant guilty of a crime on the basis of the accomplice's testimony, unless that testimony is corroborated.)[3]

An "accomplice" is a person who played an intentional role in aiding the commission of the crime and made no reasonable effort to prevent the crime before it was committed. "Intentional role" includes intentionally aiding, advising, hiring, counseling, conspiring with, or procuring another to commit the crime. A person's presence or actions constituted intentionally aiding if the person knew (another person) (others) (was) (were) going to commit or (was) (were) committing a crime, and intended that (his) (her) presence or actions aid the commission of the crime(s).)

"To corroborate" means to support or confirm.

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[1] Trial courts have a duty to instruct juries on accomplice testimony in any criminal case in which it is reasonable to consider any witness against the defendant to be an accomplice and that duty to instruct remains regardless of whether counsel for the defendant requests the instruction. *State v. Barrientos-Quintana*, 787 N.W.2d 603 (Minn. 2010); *State v. Strommen*, 648 N.W.2d 681 (2002). The Supreme Court has held that, even in the absence of a request by defendant, it is plain error for a district court to fail to give an accomplice-corroboration instruction *sua sponte* when the facts warrant it. *State v. Horst*, 880 N.W.2d 24 (Minn. 2016).

[The testimony of one accomplice does not corroborate the testimony of another accomplice. Accomplice testimony must be corroborated by evidence other than accomplice testimony before you may find the defendant guilty, but such other evidence may corroborate the testimony of each accomplice.][4]

COMMENT

Minn. Stat. § 634.04.

Use CRIMJIG 2.09 during trial and CRIMJIG 3.18 at the close of trial.

Corroborating evidence need only be sufficient to restore confidence in the truthfulness of the accomplice's testimony. *State v. Clark*, 755 N.W.2d 241 (Minn. 2008). Corroborating evidence need not be enough to lead the jurors to convict without accomplice testimony; it need only affirm the accomplice's truthfulness and point to the defendant's guilt in some substantial degree. *State v. Reed*, 737 N.W.2d 572 (Minn. 2007).

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[2] Use this option when the witness has been found to be an accomplice as a matter of law. *State v. Shoop*, 441 N.W.2d 475 (Minn. 1989).

[3] Use this option when it is unclear whether the witness was an accomplice. In such a case, the jury should decide whether or not the witness was an accomplice. *State v. Shoop*, 441 N.W.2d 475 (Minn. 1989).

[4] *See State v. Wallert*, 402 N.W.2d 570 (Minn. Ct. App. 1987).

CHAPTER 3

INSTRUCTIONS TO JURY AT CLOSE OF CASE

CRIMJIG 3.03

PROOF BEYOND A REASONABLE DOUBT

COMMENT

Replace the current Comments with the following text:

But see State v. Thao, 875 N.W.2d 834 (Minn. 2016) where alternative language was held not to constitute error.

In *State v. Sap*, 408 N.W.2d 638 (Minn.App.1987), the Court held that the "Courts are always safe in using the instruction of CRIMJIG 3.03."

The "morally certain" language of the first CRIMJIG 3.03 need not be given. *State v. Udstuen*, 345 N.W.2d 766 (Minn. 1984); *State v. Schmieg*, 322 N.W.2d 759 (Minn. 1982); *State v. Olkon*, 299 N.W.2d 89 (Minn. 1980); *State v. Boykin*, 252 N.W.2d 604 (Minn. 1977).

In *Victor v. Nebraska*, 511 U.S. 1, 114 S. Ct. 1239, 127 L.Ed.2d 583 (1994) the United States Supreme Court held that the Constitution does not dictate any particular form of words used in advising the jury of the Government's burden to prove the defendant's guilt beyond a reasonable doubt, so long as the instructions taken as a whole correctly convey the concept of proof beyond a reasonable doubt.

CRIMJIG 3.04

DUTIES OF JURORS: SELECTION OF FOREPERSON; UNANIMOUS VERDICT; DELIBERATION; RETURN OF VERDICT; ADVISING OF ADDITIONAL ISSUES

Replace current Jury Instruction with the following text:

When you return to the jury room to discuss this case you must select a jury member to be foreperson. That person will lead your deliberations.

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict. Your verdict must be unanimous.

You should discuss the case with one another, and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced they are erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a verdict.

The foreperson must date and sign the verdict form when you have finished your deliberations and reached a verdict.

When you agree on a verdict, notify the (deputy) (bailiff) (jury attendant).

You will return to the courtroom where your verdict will be received and read out loud in your presence.

[After you return your verdict, there may be additional issues for you to address and decide. I will instruct you further at that time.[1]]

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[1] The bracketed instruction should be given only when there is a possibility of a bifurcated *Blakely* proceeding, as provided under Rule Crim. Proc. 11.04, subd. 2 and CRIMJIG 8.01, in order to alert the jurors that they may have further duties after returning the verdict.

CRIMJIG 3.05

DIRECT AND CIRCUMSTANTIAL EVIDENCE

COMMENT

Add the following text at the beginning of the Comment:

In an appellate challenge to the sufficiency of this instruction against a request for a "rational hypothesis" instruction, the Supreme Court, in *State v. Fox*, 868 N.W.2d 206 (Minn. 2015) upheld this instruction, explaining that the "rational hypothesis" test discussed in *State v. Turnipseed*, 297 N.W.2d 308 (Minn. 1980), is a test for sufficiency of evidence. It went on to say that tests for sufficiency of evidence are conceptually different from jury instructions and not every sufficiency of evidence test should be given to the jury.

CRIMJIG 3.06

RULINGS ON OBJECTIONS TO EVIDENCE

Replace current Jury Instruction with the following text:

During this trial I have ruled on objections to certain testimony (and exhibits). You must not concern yourself with the reasons for the rulings, since they are controlled by rules of evidence.

By admitting into evidence testimony (and exhibits) as to which objection was made, I did not intend to indicate the weight to be given such testimony (and exhibits). You are not to speculate as to possible answers to questions I did not require to be answered. You are to disregard all evidence I have ordered stricken or have told you to disregard.

CRIMJIG 3.16

TESTIMONY AS TO OTHER CRIMES OR OCCURENCES

Replace the current Jury Instruction with the following text:

You have heard evidence of an occurrence on ______ at ______. As I told you at the time this evidence was offered, it was admitted for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the (indictment) (complaint). [This evidence is not to be used as proof of the character of the defendant or that defendant acted in conformity with such character.[1]]

The defendant is not being tried for and may not be convicted of any offense other than the charged offense(s). You are not to convict the defendant on the basis of any occurrence on ______ at ______. To do so might result in unjust, double punishment.

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[1] This phrase should be used when *Spreigl* evidence is introduced that only goes to the identity of defendant. *See* Minn. R. Evidence 404 (b). Alternatively, the court, if the defendant requests it, may give Eighth Circuit Model Criminal Jury Instruction 2.09. When the evidence is being properly admitted for more than one purpose, CRIMJIG 2.01 and CRIMJIG 3.16 are proper instructions. *See Ture v. State*, 681 N.W.2d 9 (Minn. 2004).

COMMENT

Replace the third paragraph to the Comment with the following text:

This instruction should be given upon receipt of other crime or occurrence evidence (note the exception for relationship evidence set out in CRIMJIG 2.07) and as part of the final instruction (CRIMJIG 3.16) even if it is not specifically requested. *State v. Bolte*, 530 N.W.2d 191 (Minn. 1995). In *State v. Bissell*, 368 N.W.2d 281 (Minn. 1985) the Supreme Court noted that this instruction should be given even when the defendant introduces evidence of his own prior conviction. The failure to give the instruction sua sponte constitutes plain error.

Add the following text at the end of the fourth paragraph of the Comment:

In *State v. Welle*, 870 N.W.2d 360 (Minn. 2015), the Supreme Court noted that defendant Welle's repeated false assertion of self-defense in a number of assaults were admissible as *Spreigl* evidence of modus operandi.

CRIMJIG 3.18

ACCOMPLICE TESTIMONY

Replace current Jury Instruction with the following text, Footnotes, and Comments:

You cannot find the defendant guilty of a crime on the basis of the testimony of an accomplice unless that testimony is corroborated by other evidence that tends to convict the defendant of the crime.[1]

(________ is an accomplice of the defendant.)[2]

(You will have to consider whether or not (________) (any person who has testified in this case) is an accomplice of the defendant. If you find that (________) (any person who has testified in this case) is an accomplice, you cannot find the defendant guilty of a crime on the basis of the accomplice's testimony, unless that testimony is corroborated.[3]

An "accomplice" is a person who played an intentional role in aiding the commission of the crime and made no reasonable effort to prevent the crime before it was committed. "Intentional role" includes intentionally aiding, advising, hiring, counseling, conspiring with, or procuring another to commit the crime. A person's presence or actions constituted intentionally aiding if the person knew (another person) (others) (was) (were) going to commit or (was) (were) committing a crime and intended that (his) (her) presence or actions aid the commission of the crime(s).) "To corroborate" means to support or confirm.

The evidence that can corroborate the testimony of an accomplice must do more than merely show that the crime was committed or show the circumstances of the crime, but the corroborating evidence need not convince you by itself that the defendant committed the crime. It is enough that the corroborating evidence tends to show that the defendant committed the crime, and that the corroborating evidence, when considered with the testimony of an

accomplice, convinces you beyond a reasonable doubt that the defendant committed the crime.

The testimony of one accomplice does not corroborate the testimony of another accomplice. Accomplice testimony must be corroborated by evidence other than accomplice testimony before you may find the defendant guilty, but such other evidence may corroborate the testimony of each accomplice.[4]

COMMENT

Minn. Stat. § 634.04.

Use CRIMJIG 2.09 during trial and CRIMJIG 3.18 at the close of trial.

Corroborating evidence need only be sufficient to restore confidence in the truthfulness of the accomplice's testimony. *State v. Clark*, 755 N.W.2d 241 (Minn. 2008). Corroborating evidence need not be enough to lead the jurors to convict without accomplice testimony; it need only affirm the accomplice's truthfulness and point to the defendant's guilt in some substantial degree. *State v. Reed*, 737 N.W.2d 572 (Minn. 2007).

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[1] Trial courts have a duty to instruct juries on accomplice testimony in any criminal case in which it is reasonable to consider any witness against the defendant to be an accomplice and that duty to instruct remains regardless of whether counsel for the defendant requests the instruction. *State v. Barrientos-Quintana*, 787 N.W.2d 603 (Minn. 2010); *State v. Strommen*, 648 N.W.2d 681 (Minn. 2002). The Supreme Court has held that, even in the absence of a request by defendant, it is plain error for a district court to fail to give an accomplice-corroboration instruction *sua sponte* when the facts warrant it. *State v. Horst*, 880 N.W.2d 24 (Minn. 2016).

[2] Use this option when the witness has been found to be an accomplice as a matter of law. *State v. Shoop*, 441 N.W.2d 475 (Minn. 1989).

[3] Use this option when it is unclear whether the witness was an accomplice. In such case, the jury should decide whether or not the witness was an accomplice. *State v. Shoop*, 441 N.W.2d 475 (Minn. 1989).

[4] *See State v. Wallert*, 402 N.W.2d 570 (Minn. Ct. App. 1987).

CRIMJIG 3.20

LESSER CRIMES

Replace current Jury Instruction with the following text:

This instruction has been removed and the Committee recommends the use of CRIMJIG 3.23.

COMMENT

Replace the fifth paragraph of the Comment with the following text:

The *Dahlin* court confirmed prior holdings that the failure to request a lesser-included instruction by the defendant, even if warranted by the evidence, constitutes a waiver as any such instruction. *Id.* (discussing *State v. Leinweber*, 303 Minn. 414, 228 N.W.2d 120 (1975); *State v. Jordan*, 272 Minn. 84, 136 N.W.2d 601 (1965)). *See Troxel v. State*, 875 N.W.2d 302 (Minn. 2016). If the defendant expressly waives the right, the court may, in its discretion, withhold the instruction, *see State v. Bellecourt*, 390 N.W.2d 269 (Minn. 1986); *State v. Walker*, 306 Minn. 105, 235 N.W.2d 810 (1975), or may *sua sponte* submit such lesser degrees as the court determines—even over the objection of the prosecution or the defendant. *Leinweber*, 303 Minn. at 421, 228 N.W.2d at 125. *See also State v. Scheerle*, 285 N.W.2d 686 (1979).

CRIMJIG 3.30

CLOSING INSTRUCTION ON RECEIPT OF TESTIMONY OF OTHER DOMESTIC ABUSE CONDUCT

Replace the current Jury Instruction and Comments with the following text and Comments:

The State has introduced evidence of conduct by the defendant on ________ at ________. As I told you at the time this evidence was offered, it was admitted for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and ________ [(and) (or) other (family) (household) members] in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in the complaint.

The defendant is not being tried for and may not be convicted of any behavior other than the charged offense(s). You are not to convict the defendant on the basis of similar conduct on ________ at ________.

COMMENT

Minn. Stat. § 634.20.

Use CRIMJIG 2.07 during trial and CRIMJIG 3.30 at the close of trial.

The Minnesota Supreme Court in *State v. Zinski*, 927 N.W.2d 272, 278 (Minn. 2019), held that when a district court admits relationship evidence under Minn. Stat. § 634.20 over a defendant's objection that the evidence does not satisfy section 634.20, the court must *sua sponte* instruct the jurors on the proper use of such evidence unless the defendant objects to the instruction.

CRIMJIG 3.31

CAUSATION

Replace current Jury Instruction with the following text and Comment:

["To cause"] ["To proximately cause"] means to be a substantial causal factor in causing the [death]. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the [death] does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the [death]. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.

COMMENT

State v. Smith, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 3.32

"KNOW"—"HAD REASON TO KNOW— "INTENTIONALLY"—"WITH INTENT"— "RECKLESSLY"—DEFINED

Replace current Jury Instruction with the following Text, Footnote, and Comments:

"To know" requires only that the actor believes that the specified fact exists.

"Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word "intentionally."[1]

"With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act, if successful, will cause that result.

"Recklessly" means that the defendant acted in conscious disregard of a substantial and unjustifiable risk that [the specified fact exists][the specified fact will result from (his) (her) conduct]. This means the defendant (consciously) (intentionally) committed an act: 1) that created a risk; 2) the risk was substantial; 3) there was no adequate reason for taking the risk; 4) the defendant was aware of the risk; and 5) the defendant disregarded it. The defendant need not have intended, however, to cause harm.

COMMENT

The definition of "recklessly" is based upon the decision in *State v. Engle*, 743 N.W.2d 592 (Minn. 2008), involving the reckless discharge of a firearm within a municipality. The numerated list is the Committee's attempt to provide a clear explanation of the standard in terms a jury can understand. The Committee relied upon *Engle* (743 N.W.2d at 8) in formulating the list.

For a discussion of the doctrine of transferred intent, as applied to premeditated murder, as well as a review of cases, *see State v. Hall*, 722 N.W.2d 472 (Minn. 2006) (instruction impermissibly relieved state of burden of proof where victim was intended victim). Premeditation will transfer with intent if the perpetrator premeditated the murder of an intended victim but accidentally killed an unintended victim. *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006). *See also State v. Bakdash*, 830 N.W.2d 906 (Minn. App. 2013).

In *State v. Dorn*, the Supreme Court held that the mens rea required for assault-harm, Minn. Stat. § 609.02, subd. 10(2), is the general intent to commit an act that constitutes a battery. 887 N.W.2d 826 (Minn. 2016); *see also State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). The court noted that "a general-intent crime only requires proof that 'the defendant intended to do the physical act forbidden, without proof that [she] meant to or knew that [she] would violate the law or cause a particular result.' " *Dorn*, 887 N.W.2d at 830 (quoting *Fleck,* 810 N.W.2d at 308). On the other hand, for a specific-intent crime (*e.g.*, assault with the intent to cause fear), the State must show that the defendant "meant to or knew that [she] would violate the law or cause a specific result." *Id.*

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[1] Criminal intent does not require proof of knowledge of the age of a minor, even though age is a material element in the crime in question. Minn. Stat. § 609.02, subd. 9(6).

CRIMJIG 3.35

RESTRAINT OF DEFENDANT *[New]*

Members of the jury, [the defendant] has been restrained during this trial. The use of this restraint is not evidence and you must not consider this in any way when deciding whether the State has proven beyond a reasonable doubt [the defendant] is guilty of the crime(s) charged.

COMMENT

Minn. R. Crim. P. 26.03, subd. 2(d) (stating "[i]f the restraint is apparent to the jury, and the defendant requests, the judge must instruct the jury that the restraint must not be considered in reaching the verdict").

B. GENERAL PRINCIPLES OF CRIMINAL LAW

CHAPTER 4

LIABILITY FOR CRIMES OF ANOTHER

CRIMJIG 4.01

LIABILITY FOR CRIMES OF ANOTHER

Replace the current Jury Instruction and Comments with the following text and Comments:

READ SEPARATELY FOR EACH CHARGED OFFENSE AFTER THE JURY HAS BEEN INSTRUCTED ON THE ELEMENTS OF EACH CHARGED OFFENSE. ***The Committee recommends adding the following explanatory sentence after the Definition of each offense, if accurate: "The defendant is charged with committing this crime or intentionally aiding the commission of this crime." Also, the Committee recommends modifying the jury charge after the elements of the charged offense to provide: "If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty, unless you find the state has proven beyond a reasonable doubt that the defendant is liable for this crime committed by another person according to the instruction below."***

The defendant is guilty of the crime of ________ committed by another person only if the defendant has played an intentional role in aiding the commission of the crime of ________ and made no reasonable effort to prevent the crime before it was committed. "Intentional role" includes intentionally aiding, advising, hiring, counseling, conspiring with, or procuring another to commit the crime.

The defendant's presence or actions constitute intentionally aiding only if:

First, the defendant knew (another person) (others) (was) (were) going to commit or (was) (were) committing a crime.

Second, the defendant intended that (his) (her) presence or actions aid the commission of that crime.

[If the defendant intentionally aided another person in committing a crime, or intentionally advised, hired, counseled, conspired with, or otherwise procured the other person to commit it, the defendant is also guilty of any other crime the other person commits while trying to commit the intended crime, if that other crime was reasonably foreseeable to the defendant as a probable consequence of trying to commit the intended crime.]

The defendant is guilty of the crime of _______, however, only if the other person commits that crime. The defendant is not guilty for aiding, advising, hiring, counseling, conspiring, or otherwise procuring the commission of the crime of _______, unless that crime is actually committed.

The state has the burden of proving beyond a reasonable doubt that the defendant intentionally aided another person in committing the crime of _______.

COMMENT

Minn. Stat. § 609.05, subds. 1, 2.

In *State v. Milton*, 821 N.W.2d 789, 807–08 (Minn. 2012), the Minnesota Supreme Court held it was error for the trial court not to instruct the jury that it could only find the defendant guilty of aiding through the defendant's presence if the jury found the defendant knew the alleged accomplices were going to commit a crime and the defendant intended the defendant's presence to aid the commission of the crime. *See also State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016) (requiring the jury find beyond a reasonable doubt the defendant's aiding of the principal was intentional).

In *State v. Bahtuoh*, 840 N.W.2d 804, 814 (Minn. 2013), the Minnesota Supreme Court noted that the attempt by the district court to combine the aiding and abetting instruction with the instructions on the substantive offense conflated the mental status required for criminal liability as a principal and as an accomplice.

In *State v. Ezeka*, __ N.W.2d __ (Minn. July 15, 2020), the Minnesota Supreme Court directed that district courts must separately instruct the jury on accomplice liability and on the elements of the underlying substantive offense, stating "The era of hybrid instructions has ended." The court also said it was error to instruct the jury on accomplice liability despite a reference to section 609.05 in the charging document, because there was no evidence the appellant acted as an accomplice, and the state's theory at trial was that the appellant was the shooter and, therefore, directly liable for his actions as a principal.

CHAPTER 5

ANTICIPATORY CRIMES

CRIMJIG 5.18

SOLICITATION OF A JUVENILE TO COMMIT A CRIME—ELEMENTS

Replace current Jury Instruction with the following text, Comment, and remove all Footnotes:

The elements of this crime are:

[1] First, the defendant (solicited) (conspired with) ________ to commit the crime of ________.

> **("To solicit" means to command, entreat, or attempt to persuade a specific person.) ("To conspire" means to agree with another to commit a crime, and one of the parties to the agreement does an overt act to further the commission of the crime.)**
>
> **The elements of ________ are:**
>
> **[INSERT elements of the underlying crime]**
>
> **The defendant is not charged with ________ in this case. I have read the elements of that offense because the crime of solicitation is proven only if you find the defendant (solicited) (conspired with) ________ to commit the particular crime of ________.**

[2] First, the defendant was an accomplice to ________ in the commission of the crime of ________.

> **An "accomplice" is one who played an intentional role in aiding the commission of the crime and made no**

reasonable effort to prevent the crime before it was committed. "Intentional role" includes intentionally aiding, advising, hiring, counseling, conspiring with, or procuring another to commit the crime. The defendant's presence or actions constituted intentionally aiding if the defendant knew (another person) (others) (was) (were) going to commit or (was) (were) committing a crime and intended that (his) (her) presence or actions aid the commission of the crime(s).

The defendant was an accomplice to ________ in the commission of the crime, however, only if ________ committed a crime. The defendant was not an accomplice unless some crime [including an attempt] was actually committed. An attempt was committed if, with intent to commit the crime, ________________ did an act that was a substantial step toward, and more than mere preparation for, the commission of the crime.

The elements of ________ are:

[INSERT elements of the underlying crime]

The defendant is not charged with ________ in this case. I have read the elements of that offense because the crime of solicitation is proven only if you find the defendant was an accomplice to ________ in the commission of the particular crime of ________.

Second, the defendant was 18 years of age or older at the time of the defendant's act.

Third, ________ was a minor at the time of the defendant's act. A minor is an individual under 18 years of age.

Fourth, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a rea-

sonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.494.

CHAPTER 6

DEFENSES—MENTAL ILLNESS OR COGNITIVE IMPAIRMENT *[Retitled]*

CRIMJIG 6.02

DEFENSE OF MENTAL ILLNESS OR COGNITIVE IMPAIRMENT

Replace current Jury Instruction with the following text:

The defendant has asserted a defense of mental illness or cognitive impairment.

Under Minnesota law, a person is not criminally liable for an act when, at the time of committing the act, the person did not know the nature of the act, or did not know that it was wrong, because of a defect of reason caused by a mental illness or cognitive impairment.

The defense of mental illness or cognitive impairment is as follows:

First, the defendant did not know the nature of the act. This means the defendant did not understand what the defendant was doing. If, because of a defect of reason, the defendant did not know what action the defendant was taking or what the consequences of the defendant's action would be, then the defendant did not know the nature of the act.

Second, even if the defendant knew the nature of the act, the defendant did not understand that the act was wrong. [The word "wrong" is used in the moral sense and does not simply refer to a violation of a statute. Stated another way, even if the defendant realized that the act violated the law, the defendant is not criminally liable if,

because of a defect of reason, the defendant did not understand that the act was morally wrong.]

Third, the failure of the defendant to know the nature of the act or that it was wrong, must have been the result of a defect of reason caused by [mental illness] [cognitive impairment].

The defendant has the burden of proving the defense of mental illness or cognitive impairment. If you find that it is more likely true than not true that the defendant, at the time of committing the act, did not know the nature of the act, or did not know that it was wrong, then the defendant is not guilty of the crime of ____. If you do not find that this is more likely true than not true, then the defense of mental illness or cognitive impairment has not been proven.

CRIMJIG 6.03

BURDEN OF PROOF

Replace the current Jury Instruction with the following text:

The defendant has the burden of proving the defense of [mental illness] [cognitive impairment] by the greater weight of the evidence. This means the defendant must prove that it is more likely true than not true that because of a defect of reason caused by a [mental illness] [cognitive impairment], the defendant did not know the nature of the act or did not know that it was wrong.

[During the first stage of this trial, you determined that the State proved beyond a reasonable doubt that the defendant committed the crime of ________.] If you now find that the defendant has proven by the greater weight of the evidence that the defendant did not know the nature of the act or that the defendant did not know the act was wrong, then the defendant is not guilty of by reason of [mental illness] [cognitive impairment]. If you find that the defendant has not proven by the greater weight of the evidence the defense of [mental illness] [cognitive impairment], the defendant is guilty.

CHAPTER 7

DEFENSES—MISCELLANEOUS

CRIMJIG 7.02

ENTRAPMENT

Replace first paragraph of Jury Instruction with the following text:

The defendant asserts that (he) (she) was entrapped. A person is "entrapped" when (he) (she) commits an act or engages in conduct otherwise criminal, if the criminal design does not originate with the person, but is conceived in the mind of a government agent, and the person is by coercion, persuasion, deceitful representation, or inducement lured into committing an act the person otherwise would not have committed and had no intention of committing.

CRIMJIG 7.05

JUSTIFIABLE TAKING OF LIFE *[Retitled]*

WITHDRAWN.

Now see CRIMJIGS 7.13–7.19 for instructions on Self-Defense.

CRIMJIG 7.06

AUTHORIZED USE OF FORCE *[Retitled]*

WITHDRAWN.

Now see CRIMJIGS 7.13–7.19 for instructions on Self-Defense.

CRIMJIG 7.07

SELF-DEFENSE—REVIVAL OF AGGRESSOR'S RIGHT OF SELF-DEFENSE

WITHDRAWN.

Now see CRIMJIGS 7.13–7.19 for instructions on Self-Defense.

CRIMJIG 7.11

AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS *[New]*

WITHDRAWN.

Now see CRIMJIGS 7.13–7.19 for instructions on Self-Defense.

CRIMJIG 7.12

AUTHORIZED USE OF NON-DEADLY FORCE BY PEACE OFFICERS *[New]*

WITHDRAWN.

Now see CRIMJIGS 7.13–7.19 for instructions on Self-Defense.

CRIMJIG 7.13

DEFENSE OF SELF OR OTHERS—DEATH UNINTENTIONAL OR DEATH NOT THE RESULT *[New]*

The defendant asserts the defense of self or others.

No crime is committed when a person uses reasonable force to resist [or to aid (________) (another person) in resisting] an offense against the person, if such an offense was being committed or the person reasonably believed that it was.[1]

> An "offense against the person" means an offense of a physical nature with the potential to cause bodily harm.[2]
>
> "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.[3]

It is lawful for a person, who is resisting an offense against (his) (her) person [or aiding another in resisting an offense against the person] and who has reasonable grounds to believe that bodily injury is about to be inflicted to defend from an attack. In doing so, the person may use all force and means that the person reasonably believes to be necessary and that would appear to a reasonable person, in similar circumstances, to be necessary to prevent an injury that appears to be imminent. The kind and degree of force a person may lawfully use in defense of self or others is limited by what a reasonable person in the same situation would believe to be necessary. Any use of force beyond that is not reasonable.[4]

The legal excuse of defense of self or others is available only to those who act honestly and in good faith. A person may use force in defense of self or others only if the person was not the aggressor and did not provoke the offense.[5] The defendant has a duty to retreat or avoid the danger if reasonably possible, except the defendant has

no duty to retreat when acting in defense of self or others in (his) (her) home.[6]

[The rule of self-defense does not authorize one to seek revenge or to take into (his) (her) own hands the punishment of an offender.]

The defendant is not guilty of a crime if (he) (she) acted in defense of self or others as authorized by law.

To prove guilt, the state has the burden of proving beyond a reasonable doubt that at least one of the requirements of this defense has not been met.

COMMENT

Minn. Stat. § 609.06, subd. 1(3).

There is no duty to retreat from one's own home before defending oneself, even against a co-resident. *State v. Glowacki*, 630 N.W.2d 392 (Minn. 2001). *See also State v. Baird*, 654 N.W.2d 105 (Minn. 2002); *State v. Devens*, 825 N.W.2d 255 (Minn. 2014).

A defendant claiming self-defense or defense of property or dwelling carries the burden of going forward with evidence to support the claim, then the burden shifts to the state to disprove, beyond a reasonable doubt, one or more of the elements of the defense. *State v. Devens*, 852 N.W.2d 255 (Minn. 2014); *State v. Basting*, 572 N.W.2d 281 (Minn. 1997). A defendant is entitled to an instruction on his theory of the case if there is evidence to support it. *State v. Pendleton*, 567 N.W.2d 265 (Minn. 1997). In determining whether evidence exists to support a self-defense or defense of property or dwelling jury instruction, the record must be viewed in the light most favorable to the party requesting the instruction. *State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005).

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[1] *State v. Soukup*, 656 N.W.2d 424, 429 (Minn. 2003).

[2] *Id.*

[3] Minn. Stat. § 609.02, subd. 7.

[4] *State v. Glowacki*, 630 N.W.2d 392 (Minn. 2001).

[5] *State v. Thompson*, 544 N.W.2d 8 (Minn. 1996).

[6] *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014).

CRIMJIG 7.14

DEFENSE OF PROPERTY—DEATH UNINTENTIONAL OR DEATH NOT THE RESULT *[New]*

The defendant has asserted the justifiable use of force in defense of property.

It is lawful [for a person in lawful possession of real or personal property] [when assisting another person in lawful possession of real or personal property] to use reasonable force to resist trespass upon or other unlawful interference with the property.[1] In doing so, the person may use all force and means that the person reasonably believes to be necessary and that would appear to a reasonable person, in similar circumstances, to be necessary to resist trespass upon or other unlawful interference with the property. The kind and degree of force a person may lawfully use is limited by what a reasonable person in the same situation would believe to be necessary to resist trespass upon or other unlawful interference with the property. Any use of force beyond that is not reasonable.[2]

The legal excuse of defense of property is available only to those who act honestly and in good faith. A person may act in defense of property only if the person was not the aggressor and did not provoke the trespass on or unlawful interference with the property.[3] The defendant has a duty to retreat or avoid the danger if reasonably possible, except the defendant has no duty to retreat from the home when acting in defense of property.[4]

[The rule of defense of property does not authorize one to seek revenge or to take into (his) (her) own hands the punishment of an offender.]

The defendant is not guilty of a crime if (he) (she) acted as authorized by law in resisting a trespass upon or other unlawful interference with property.

To prove guilt, the state must prove beyond a reason-

able doubt that at least one of the requirements of defense of property has not been met.

COMMENT

Minn. Stat. § 609.06, subd. 1(4).

A defendant claiming self-defense or defense of property or dwelling carries the burden of going forward with evidence to support the claim, then the burden shifts to the state to disprove, beyond a reasonable doubt, one or more of the elements of the defense. *State v. Devens*, 852 N.W.2d 255 (Minn. 2014); *State v. Basting*, 572 N.W.2d 281 (Minn. 1997). A defendant is entitled to an instruction on his theory of the case if there is evidence to support it. *State v. Pendleton*, 567 N.W.2d 265 (Minn. 1997). In determining whether evidence exists to support a self-defense or defense of property or dwelling jury instruction, the record must be viewed in the light most favorable to the party requesting the instruction. *State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005).

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[1] Neither "trespass" nor "other unlawful interference with the property" is defined in this statute. CIVJIG 17.22 defines "trespass" as "any unauthorized entry upon the premises of another." If unlawful conduct other than trespass is claimed, case-specific instructions must be drafted.

[2] *State v. Glowacki*, 630 N.W.2d 392 (Minn. 2001).

[3] *State v. Thompson*, 544 N.W.2d 8 (Minn. 1996).

[4] *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014); *see* State v. Lutz, unpub. op., 2004 WL 2521193 (Minn. Ct. App. Nov. 9, 2004).

CRIMJIG 7.15

DEFENSE OF SELF OR OTHERS—JUSTIFIABLE INTENTIONAL TAKING OF LIFE[1] *[New]*

The defendant asserts the defense of the justifiable taking of life.

No crime is committed when a person intentionally takes the life of another if the person's action was taken in resisting or preventing an offense of a physical nature[2] the person reasonably believed exposed (him) (her) (another person) to death or great bodily harm.

In order for the taking of a life to be justified for this reason, (three) (four) conditions must be met.

First, the defendant's act must have been done in the belief that it was necessary to avert death or great bodily harm. "Great bodily harm" means bodily injury that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.[3]

Second, the judgment of the defendant as to the gravity of the peril to which (he) (she) (the other person) was exposed must have been reasonable under the circumstances.

Third, the defendant's election to defend must have been such as a reasonable person would have made in light of the danger perceived.

[Fourth, there was no reasonable possibility of retreat to avoid the danger.][4]

All of these conditions must be met.[5]

The person may use all force and means that the person reasonably believes to be necessary and that would appear to a reasonable person, in similar circum-

stances, to be necessary to prevent death or great bodily harm that appears to be imminent. The kind and degree of force a person may lawfully use in self-defense is limited by what a reasonable person in the same situation would believe to be necessary. Any use of force beyond that is unreasonable.

The legal excuse of defense of self or others is available only to those who act honestly and in good faith. A person may use force in defense of self or others only if the person was not the aggressor and did not provoke the offense.[6]

The defendant is not guilty of a crime if (he) (she) acted as authorized by law in defense of self or others.

To prove guilt, the state must prove beyond a reasonable doubt that at least one of the requirements of this defense has not been met.

COMMENT

Minn. Stat. §§ 609.06, subd. 1(3), 609.065.

The election to kill must have been such as a reasonable person would have made in light of the danger to be apprehended. *State v. Boyce*, 284 Minn. 242, 170 N.W.2d. 104 (1969). Use of a subjective standard of reasonableness, and the concept of "imperfect self-defense," wherein an offense of intentional murder is reduced to some degree of manslaughter if the actor's subjective belief that self-defense was necessary was objectively unreasonable but is claimed to negate an element of intent, have been rejected. *State v. Thompson*, 544 N.W.2d 8 (Minn. 1996); *see also State v. Sanford*, 450 N.W.2d 580 (Minn. Ct. App. 1990), *aff'd on pet. for post-conviction relief*, *Sanford v. State,* 499 N.W.2d 496 (Minn Ct. App. 1993); *State v. Hennum*, 428 N.W.2d 859 (Minn. Ct. App. 1988), *rev'd on other grounds,* 441 N.W.2d 793 (Minn. 1989).

A defendant claiming self-defense or defense of property or dwelling carries the burden of going forward with evidence to support the claim, then the burden shifts to the state to disprove, beyond a reasonable doubt, one or more of the elements of the defense. *State v. Basting*, 572 N.W.2d 281 (Minn. 1997); *State v. Devens*, 852 N.W.2d 255 (Minn. 2014). A defendant is entitled to an instruction on his theory of the case if there is evidence to support it. *State v. Pendleton*, 567 N.W.2d 265

(Minn. 1997). In determining whether evidence exists to support a self-defense or defense of property or dwelling jury instruction, the record must be viewed in the light most favorable to the party requesting the instruction. *State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005).

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[1] This instruction should be given only when the death was intentional. When the death was unintentional, or when the defendant's act did not result in a death, CRIMJIG 7.13 should be given. *See State v. Hare*, 575 N.W.2d 828 (Minn. 1998).

[2] The offense must be an offense against the person. *See* Minn. Stat. §§ 609.06, 609.065; *State v. Soukup*, 656 N.W.2d 424, 429 (Minn. 2003).

[3] Minn. Stat. § 609.02, subd. 8.

[4] A defendant has no duty to retreat in his or her own home, even as against a co-resident. *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014); *State v. Glowacki*, 630 N.W.2d 392 (Minn. 2001). Therefore, this element should not be included under such circumstances.

[5] *State v. Johnson*, 719 N.W.2d 619 (Minn. 2006).

[6] *State v. Thompson*, 544 N.W.2d 8, 12 (Minn. 1996).

CRIMJIG 7.16

DEFENSE OF DWELLING—JUSTIFIABLE INTENTIONAL TAKING OF LIFE[1] *[New]*

The defendant has asserted the defense of a justifiable taking of life in defense of (his) (her) place of abode.

No crime is committed when a person intentionally takes the life of another, if the person's action was taken in preventing the commission of a felony in (his) (her) place of abode.

You are instructed that ________ is a felony.

The elements of ________ are:

[INSERT elements of the underlying felony without date or venue.]

In order for a killing to be justified for this reason, all of the following conditions must be met.[2]

First, the defendant's action was done to prevent the commission of the specified felony in (his) (her) place of abode.

Second, the defendant's judgment as to the gravity of the situation was reasonable under the circumstances.

Third, the defendant's election to defend the place of abode was such as a reasonable person would have made in light of the danger perceived.

A person may use all force and means that the person reasonably believes to be necessary and that would appear to a reasonable person, in similar circumstances, to be necessary to prevent the commission of a felony in (his) (her) place of abode that appears to be imminent. The kind and degree of force a person may lawfully use in defense of (his) (her) place of abode is limited by what a reasonable person in the same situation would believe to

be necessary. Any use of force beyond that is not reasonable.[3]

The defendant has no duty to retreat when preventing the commission of a felony in (his) (her) place of abode.[4]

The legal excuse of defense of place of abode is available only to those who act honestly and in good faith. A person may use lethal force to prevent the commission of a felony in (his) (her) place of abode only if the person was not the aggressor and did not provoke the offense.[5]

The defendant is not guilty of a crime if (he) (she) acted as authorized by law in defense of (his) (her) place of abode.

To prove guilt, the state must prove beyond a reasonable doubt that at least one of the requirements of this defense has not been met.

COMMENT

Minn. Stat. §§ 609.06, subd. 1, 609.065.

There is no duty to retreat from one's own home before defending oneself, even against a co-resident. *State v. Glowacki*, 630 N.W.2d 392 (Minn. 2001). *See also State v. Devens*, 852 N.W.2d 255 (Minn. 2014) (holding that a defendant could not assert defense-of-dwelling in a common hallway of an apartment building).

A defendant claiming self-defense or defense of property or dwelling carries the burden of going forward with evidence to support the claim, then the burden shifts to the state to disprove, beyond a reasonable doubt, one or more of the elements of the defense. *State v. Devens*, 852 N.W.2d 255 (Minn. 2014); *State v. Basting*, 572 N.W.2d 281 (Minn. 1997). A defendant is entitled to an instruction on his theory of the case if there is evidence to support it. *State v. Pendleton*, 567 N.W.2d 265 (Minn. 1997). In determining whether evidence exists to support a self-defense or defense of property or dwelling jury instruction, the record must be viewed in the light most favorable to the party requesting the instruction. *State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005).

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[1] This instruction should be given only when the death was intentional.

When the death was unintentional, or when the defendant's act did not result in a death, CRIMJIG 7.14 should be given. *See* State v. Hare, 575 N.W.3d 828 (Minn. 1998).

[2] *State v. Carothers*, 594 N.W.2d 897, 904 (Minn. 1999).

[3] *See State v. Glowacki*, 630 N.W.2d 392 (Minn. 2001); *see also State v. Pendleton*, 567 N.W.2d 265, 270 (Minn. 1997).

[4] *State v. Devens*, 852 N.W.2d 255, 259 (Minn. 2014); *State v. Carothers*, 594 N.W.2d 897, 903 (Minn. 1999).

[5] *State v. Thompson*, 544 N.W.2d 8, 12 (Minn. 1996).

CRIMJIG 7.17

REVIVAL OF AGGRESSOR'S RIGHT OF SELF-DEFENSE *[New]*

If the defendant began or induced the offense against a person that led to the necessity of using force in the defendant's own defense, the right of the defendant to stand (his) (her) ground and thus defend (himself) (herself) is not immediately available to (him) (her). Instead, the defendant must first have declined to carry on the offense and have honestly tried to escape from it, and must clearly and fairly have informed the adversary of a desire for peace and of abandonment of the offense. Only after the defendant has done that will the law justify the defendant in thereafter standing (his) (her) ground and using force against the other person.[1]

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[1] *Bellcourt v, State*, 390 N.W.2d 269, 272 (Minn. 1986); *see also State v. Edwards*, 717 N.W.2d 405, 411–412 (Minn. 2006).

CRIMJIG 7.18

AUTHORIZED USE OF DEADLY FORCE BY A PEACE OFFICER *[New]*

The statutes of Minnesota provide that no crime is committed, and a peace officer's actions are justified, only when the peace officer uses deadly force in the line of duty when necessary to:

(1) protect the peace officer or another from apparent death or great bodily harm;

(2) effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or

(3) effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.

You are instructed that ______________ is a felony.
The elements of ______ are:

[INSERT elements of underlying felony without date or venue.]

"Peace officer" means an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the Board of Peace Officer Standards and Training, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest [, and also includes the Minnesota State Patrol, agents of the Division of Alcohol and Gambling Enforcement, state conservation officers, Metropolitan Transit police officers, Department of Corrections Fugitive Ap-

prehension Unit officers, and Department of Commerce Fraud Bureau Unit officers, and the statewide coordinator of the Violent Crime Coordinating Council] [and includes a peace officer who is employed by a law enforcement agency of a federally recognized tribe, as defined in United States Code, title 25, section 450b(e), and who is licensed by the Board of Peace Officer Standards and Training].[1]

"Deadly force" means force which the peace officer uses with the purpose of causing, or which the peace officer should reasonably know creates a substantial risk of causing, death or great bodily harm. [The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions (those designed to stun, temporarily incapacitate, or cause temporary discomfort) and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.]

"Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.[2]

As to each count or defense, the kind and degree of force a peace officer may lawfully use in protecting themselves or another, effecting arrest or capture, or preventing escape, is limited by what a reasonable peace officer in the same situation would believe to be necessary. To determine whether or not the actions of the peace officer were necessary, you must look at those facts known to the officer at the precise moment (he) (she) acted with force.

The defendant is not guilty of a crime if (he) (she) used deadly force as authorized by law.

To prove guilt, the State must prove beyond a reasonable doubt that the defendant's use of deadly force was not authorized by law.

COMMENT

Minn. Stat. § 609.066, subd. 2.

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[1] Minn. Stat. § 626.84, subd. 1.

[2] Minn. Stat. § 609.02, subd. 8.

CRIMJIG 7.19

AUTHORIZED USE OF NON-DEADLY FORCE BY A PEACE OFFICER *[New]*

The statutes of Minnesota provide that no crime is committed, and a peace officer's[1] actions are justified, when the peace officer uses reasonable force in the line of duty in

[1] effecting a lawful arrest.

[2] the execution of legal process.

[3] enforcing an order of the court.

[4] executing any other duty imposed upon the peace officer by law. You are instructed that ____________________ is a duty imposed on peace officers by law.

"Peace officer" means an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the Board of Peace Officer Standards and Training, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest [, and also includes the Minnesota State Patrol, agents of the Division of Alcohol and Gambling Enforcement, state conservation officers, Metropolitan Transit police officers, Department of Corrections Fugitive Apprehension Unit officers, and Department of Commerce Fraud Bureau Unit officers, and the statewide coordinator of the Violent Crime Coordinating Council] [and includes a peace officer who is employed by a law enforcement agency of a federally recognized tribe, as defined in United States Code, title 25, section 450b(e), and who is licensed by the Board of Peace Officer Standards and Training].[2]

As to each count or defense, the kind and degree of force a peace officer may lawfully use in executing (his) (her) duties is limited by what a reasonable peace officer

in the same situation would believe to be necessary. Any use of force beyond that is not reasonable. To determine whether or not the actions of the peace officer were reasonable, you must look at those facts known to the officer at the precise moment (he) (she) acted with force.

The defendant is not guilty of a crime if (he) (she) used force as authorized by law.

To prove guilt, the state must prove beyond a reasonable doubt that the defendant's use of force was not authorized by law.

COMMENT

Minn. Stat. § 609.06, subd. 1(1).

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[1] The precise term in the statute is "public officer," which is not defined.

[2] Minn. Stat. § 626.84, subd. 1.

CHAPTER 8

SENTENCING PROCEEDINGS

CRIMJIG 8.01

MANDATORY MINIMUM—POSSESSION OF A DANGEROUS WEAPON OR FIREARM

n. 3.

Replace footnote 3 with the following text:

In *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

n. 4.

Replace footnote 4 with the following text:

In *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

SPECIAL VERDICT FORMS

CR8-SVF

AGGRAVATING FACTORS—VERDICT FORM *[Retitled]*

[Insert appropriate aggravating factor question]

These are for example only. *See also* CRIMJIG 12.110 for factors relating to criminal sexual conduct.

Particularly Vulnerable—Sentencing Guidelines II.D.103.2.b(1) See also Particular Vulnerability in Blakely Proceedings Appendix A on how to proceed

when an aggravated sentence for particular vulnerability is sought.)

1. **Vulnerability due to age or other condition: (1) What was the (age) (infirmity) (reduced mental or physical incapacity) of the victim? (2) Because of the victim's (age) (infirmity) (reduced mental or physical incapacity) was [(he) (she)] [(unable to fight back against) (unable to flee) (unable to seek help against)] the defendant?**

1a. Vulnerability due to the presence of children: Did the presence of (a child) (children) (a vulnerable adult) prevent the victim from [(fighting back against) (fleeing) (seeking help against)] the defendant?

2. **Did the defendant know or should the defendant have known that (the victim) (____) (was) (had) (condition)?**

_Yes _No

3. **Was (the victim) (____) injured?**

_Yes _No

4. **Did the defendant have a prior conviction for a Criminal Sexual Conduct Offense or another offense in which (the victim) (____) was otherwise injured?**

_Yes _No

Particular Cruelty—Sentencing Guidelines II.D.103.2.b(2) (See *State v. Rourke*, 773 N.W.2d 913 (Minn. 2009) and the discussion on Particular Cruelty in Blakely Proceedings Appendix A on how to proceed

when an aggravated sentence for particular cruelty is sought.)

N.B. The following questions are exemplars only. The questions must be drafted to circumstances of the particular case.

Zone of Privacy: Did the defendant invade the [note that this must be specific as it relates to the crime charged] (home and area immediately surrounding the home) (apartment) (dwelling) (bedroom)] of the victim?

__Yes __No

Gratuitous Infliction of Injury: Did the defendant inflict more injury than necessary to commit the crime? Did the defendant inflict injury after having completed the crime? Did the defendant torture the victim during the crime?

__Yes __No

Failure to release in a safe place: A series of questions will be necessary to demonstrate that the place where the victim was released was not safe ("safe place" is conclusory). E.g., were there homes close by? Was the area lighted? Was the victim (properly clothed) for the weather? For walking?

__Yes __No

Failure to seek medical attention: Did the defendant fail to seek medical attention for the victim?

__Yes __No

Presence of children: Was the offense committed in

the actual presence of (a child) (children) who saw or heard or otherwise perceived the offense?

__Yes __No

Presence of children: Discovery of body: Did the defendant leave the body of the victim intending that it be discovered by (a child) (the children) of the victim?

__Yes __No

Psychological Damage: Did the defendant inflict (severe) (lasting) psychological damage upon the victim?

__Yes __No

Concealment of the body: Did the defendant conceal the victim's body? (Note that the concealment must be significant, e.g., hidden, buried, dismembered, and prolonged. Significant concealment is considered cruel given the impact on the victim's family. (*State v. Hicks*, 864 N.W.2d 153 (Minn. 2015) and cases cited therein.)

[Other relevant factors which may be drawn from case law.]

If you answered "yes" to the previous question, then answer this question: Should the defendant be held responsible for the way in which (the victim) (________) was treated?

[Insert CRIMJIG 4.01 if another person actually committed the acts.]

Use or Possession of a Dangerous Weapon or Firearm

M.S.A. § 609.11

1. **Did the defendant (or an accomplice) use a dangerous weapon other than a firearm at the time of the offense?**

   __Yes __No

2. **Did the defendant (or an accomplice) possess or use (by brandishing, displaying, threatening with, or otherwise employing) a firearm at the time of the offense?**

   __Yes __No

3. **Did the defendant have a prior conviction in which defendant (or an accomplice) [used a (firearm) (dangerous weapon)] [possessed a firearm]?**

   __Yes __No

PART II. SPECIFIC CRIMES

A. CRIMES AGAINST THE PERSON

CHAPTER 11

HOMICIDE

CRIMJIG 11.13

MURDER IN THE FIRST DEGREE—CHILD ABUSE—ELEMENTS

Replace the current jury instruction with the following text:

The elements of murder in the first degree as alleged in this case are:

First, the death of ____ must be proven.

Second, ____ was a minor. A minor is a person under eighteen years of age.

Third, the defendant caused the death of _______ while committing child abuse. Minnesota statutes define "child abuse" as ____.[1] [Here insert CRIMJIG 13.84 and CRIMJIG 13.85.]

Fourth, the defendant engaged in a past pattern of child abuse upon any child. [A "past pattern" consists of prior acts of domestic abuse which form a reliable sample of observable traits or acts which characterize an individual's behavior. More than one prior act of domestic abuse is required for there to be a past pattern.]

Fifth, the death of ___ occurred under circumstances manifesting an extreme indifference to human life.

Sixth, the defendant's act(s) took place on (or about) ___ in ___ County.

If you find each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge.

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[1] *See* M.S.A. § 609.185(b) for crimes constituting child abuse.

CRIMJIG 11.15

MURDER IN THE FIRST DEGREE—DOMESTIC ABUSE—ELEMENTS

Replace the current jury instruction with the following text:

The elements of murder in the first degree as alleged in this case are:

First, the death of ____ must be proven.

Second, the defendant caused the death of _______ while the defendant was committing domestic abuse. Minnesota statutes define "domestic abuse" as ____.[1] [Here insert the definition and elements of the underlying crime.]

Third, the defendant engaged in a past pattern of domestic abuse against ____ (and) (or) (upon another family or household member).[2] A "past pattern" consists of prior acts of domestic abuse which form a reliable sample of observable traits or acts which characterize an individual's behavior. More than one prior act of domestic abuse is required for there to be a past pattern. [When more than two prior acts of domestic violence are alleged, each juror must agree that more than one act has been proven beyond a reasonable doubt. The jury does not have to be unanimous about which acts are proven beyond a reasonable doubt, but must be unanimous that more than one prior act of domestic violence occurred.][3]

Fourth, the death of ____ occurred under circumstances manifesting an extreme indifference to human life.

Fifth, the defendant's act took place on (or about) ____, in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge.

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[1] *See* M.S.A. § 609.185(e); M.S.A. § 518B.01, subd. 2(a).

[2] *See* M.S.A. § 518B.01, subd. 2(b) for definition of family or household member.

[3] *See State v. Bustos*, 861 N.W.2d 655 (Minn. 2015).

CRIMJIG 11.21

MURDER OF AN UNBORN CHILD IN THE FIRST DEGREE—CRIMINAL SEXUAL CONDUCT IN THE FIRST OR SECOND DEGREE—ELEMENTS

Replace the current Jury Instruction with the following text, Footnote, and Comment:

The elements of this crime are:

First, the death of an unborn child must be proven. An "unborn child" is the unborn offspring of a human being conceived, but not yet born. The State does not need to prove the unborn child was viable or was known to the defendant.

Second, the defendant caused the death of the unborn child. It does not matter that the defendant may not have intended to cause the death of the unborn child or of anyone else.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant, at the time of the act, was committing or attempting to commit criminal sexual conduct in the *(first)(or)(second)* degree upon or affecting the mother of the unborn child or another.

The elements of criminal sexual conduct in the (first) (second) degree are:

[INSERT elements of the predicate crime without date or venue.]

[Add Attempt definition if appropriate.]

Fourth, the defendant acted with force or violence.

A person acts with "force or violence" if the person intentionally inflicts or attempts to inflict bodily harm upon another person, or intentionally causes fear in the other person of immediate bodily harm or death [or if the person commits any crime against another person or threatens to do so].[2]

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

Fifth, the defendant's act took place on *(or about)* ________ in ________ County.

If you find each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2661(2).

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[2] *See* Minn. Stat. § 609.341, subd. 3.

CRIMJIG 11.23

MURDER OF AN UNBORN CHILD IN THE FIRST DEGREE—WHILE COMMITTING CERTAIN CRIMES—ELEMENTS

Replace the current Jury Instruction with the following text and Footnotes and Comment:

The elements of this crime are:

First, the death of an unborn child must be proven.

An "unborn child" is the unborn offspring of a human being conceived, but not yet born. The State does not need to prove the unborn child was viable or was known to the defendant.

Second, the defendant caused the death of the unborn child.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant acted with the intent (to effect the death of) (to kill) the unborn child *(or ________)(or another person)*. To find the defendant had an "intent (to effect the death) (to kill)," you must find the defendant acted with the purpose of causing death, or believed the act would have that result. Intent, being a process of the mind,

is not always susceptible to proof by direct evidence, but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant's act be premeditated.

Fourth, at the time of the act causing the death of the unborn child, the defendant was engaged in the act of committing or attempting to commit the crime of ________.[2]

The elements of ________ are:

[INSERT elements of the predicate crime without date or venue.]

[Add Attempt definition if appropriate.]

Fifth, the defendant's act took place on *(or about)* ________ in ________ County.

If you find each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge.

COMMENT

Minn. Stat. § 609.2661(3).

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[2] *See* Minn. Stat. § 609.2661(3) for the list of predicate crimes.

CRIMJIG 11.25

MURDER IN THE SECOND DEGREE—ELEMENTS

Replace current Jury Instruction with the following text, Footnote, and Comments:

The elements of this crime are:

First, the death of ______ must be proven.

Second, the defendant caused the death of ______.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant acted with the intent (to effect the death of) (to kill______) *(or ______)(or another person)*. To find the defendant had an "intent (to effect the death of) (to kill)," you must find the defendant acted with the purpose of causing death, or believed the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence, but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant's act be premeditated.

Fourth, the defendant's act took place on *(or about)* ______ in ______ County.

If you find each of these elements has been proven

beyond a reasonable doubt, the defendant is guilty. If you find any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.19, subd. 1(2).

For most intentional crimes, nothing is said in the instructions about the manner in which intent is proven. In a typical prosecution for murder in the second degree, however, the inference to be drawn from the act is not as clear. There may be a question whether the defendant's intent was to kill or only to injure, and any conclusion must be drawn from all the surrounding circumstances. When murder in the second degree is charged as a lesser crime to murder in the first degree, the jury will have been instructed in similar fashion with respect to the proof of premeditation (*see* CRIMJIG 11.02), and it is unnecessary to speak specifically about the manner of proving intent.

The statement that "It is not necessary that the defendant's act be premeditated" is included because the members of the jury, through earlier service or from their general experience, may be cognizant of the term, and they should be instructed that it is unnecessary in murder in the second degree. The phrase should be omitted if it is felt that it will unnecessarily confuse the jury.

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.27

MURDER IN THE SECOND DEGREE—DRIVE-BY SHOOTING—ELEMENTS

Replace current Jury Instruction with the following text, Footnotes, and Comments:

The elements of this crime are:

First, the death of ________ must be proven.

Second, the defendant caused the death of ________.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the death of ________ was caused while the defendant was committing or attempting to commit the crime of drive-by shooting. The statutes of Minnesota provide that whoever (in) (having just exited from) a motor vehicle, recklessly discharges a firearm at or toward (another motor vehicle) (a building) is guilty of the crime of drive-by shooting. It is not necessary for the State to prove any intent on the part of the defendant to kill anyone.

["Motor vehicle" means a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water, or in the air.][2]

[“Building” means a structure suitable for affording shelter for human beings including any appurtenant or connected structure.][3]

Fourth, the defendant’s act took place on *(or about)* ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.19, subd. 1(2).

See Minn. Stat. § 609.66, subd 1e, for the crime of drive-by shooting.

Note that in *State v. Hayes*, 826 N.W.2d 799 (Minn. 2013), the Supreme Court held that there must be evidence that the defendant recklessly discharged a weapon at another motor vehicle or a building for the defendant to be found guilty of a drive-by shooting. Firing at or toward a person is a sentence-enhancing provision and not a part of this subdivision of the statute. In this case, although defendant deliberately murdered the victim, there was no showing that this involved a reckless discharge toward another motor vehicle or a building. The Court noted that this case involved a discharge into the vehicle defendant occupied and not “another” (i.e., a different) vehicle. The Court invited the legislature to correct this “strange result.”

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[2] *See* Minn. Stat. § 609.66, subd. 1e(c) (applying “motor vehicle” definition from section 609.52, subdivision 1).

[3] *See* Minn. Stat. § 609.66, subd. 1e(c) (applying “building” definition from section 609.581, subdivision 2).

CRIMJIG 11.29

MURDER IN THE SECOND DEGREE—WHILE COMMITTING A FELONY—ELEMENTS

Replace current Jury Instruction with the following text, Footnote, and Comments:

The elements of this crime are:

First, the death of ________ must be proven.

Second, the defendant caused the death of ________.

[“To cause” means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant’s acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a “superseding cause” caused the death. A “superseding cause” is a cause that comes after the defendant’s acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant, at the time of causing the death of ________, was committing or attempting to commit the felony offense of ________. It is not necessary for the State to prove the defendant had an intent (to effect the death of ________) (to kill) *(or another person)*, but it must prove defendant committed or attempted to commit the underlying felony.

The elements of ________ are:

[INSERT elements of the predicate crime without date or venue.]

[Add Attempt definition if appropriate.]

Fourth, the defendant's act took place on *(or about)* ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.19, subd. 2.

In *State v. Cole*, 542 N.W.2d 43 (Minn. 1996), the Supreme Court, citing the language of this instruction, held that lack of intent is not an essential element to second degree felony murder.

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.33

MURDER OF AN UNBORN CHILD IN THE SECOND DEGREE—ELEMENTS

Replace current Jury Instruction with the following Text, Footnote, and Comment:

The elements of this crime are:

First, the death of an unborn child must be proven. An "unborn child" is the unborn offspring of a human being conceived, but not yet born. The State does not need to prove the unborn child was viable or was known to the defendant.

Second, the defendant caused the death of the unborn child.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant acted with the intent to effect the death of the unborn child *(or ________)(or another person)*. To find the defendant had "the intent to effect death," you must find the defendant acted with the purpose of causing death, or believed the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence, but may be inferred from all the

circumstances surrounding the event. It is not necessary the defendant's act be premeditated.

Fourth, the defendant's act took place on *(or about)* ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2662(1).

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.35

MURDER OF AN UNBORN CHILD IN THE SECOND DEGREE—WHILE COMMITTING A FELONY—ELEMENTS

Replace current Jury Instruction with the following Text, Footnote, and Comment:

The elements of this crime are:

First, the death of an unborn child must be proven. An "unborn child" is the unborn offspring of a human being conceived, but not yet born. The State does not need to prove the unborn child was viable or was known to the defendant.

Second, the defendant caused the death of the unborn child.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant, at the time of causing the death of the unborn child, was committing or attempting to commit the felony offense of ________. It is not necessary for the State to prove the defendant had an intent to effect the death of ________, but it must prove that defendant committed or attempted to commit the underlying felony.

The elements of ________ are:

[INSERT elements of the predicate crime without date or venue.]

[Add Attempt definition if appropriate.]

Fourth, the defendant's act took place on *(or about)* ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2662(2).

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.36

MURDER IN THE SECOND DEGREE—ISSUE OF HEAT OF PASSION—ELEMENTS

Replace current Jury Instruction with the following Text, Footnote, and Comments:

The elements of this crime are:

First, the death of ________ must be proven.

Second, the defendant caused the death of ________.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant acted with the intent (to effect the death of) (to kill) ________ *(or ________)(or another person)*. To find the defendant had "the intent (to effect the death of a person) (to kill)," you must find the defendant acted with the purpose of causing death, or believed the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence, but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant's act be premeditated.

Fourth, the defendant did not act in the heat of passion provoked by such words or acts as would provoke a

person of ordinary self-control in like circumstances. Even if the defendant acted with premeditation and with the intent (to effect the death of) (to kill) ________, *(or ________)* *(or another person)*, if the defendant acted in the heat of passion, the defendant is not guilty of murder in the first degree. However, such heat of passion is not a complete defense for the killing of another person. The heat of passion may cloud the defendant's reason and weaken willpower, and this is a circumstance the law considers in fixing the degree of guilt. If the heat of passion is provoked by words or acts that would provoke a person of ordinary self-control in like circumstances, an intentional killing is reduced to manslaughter in the first degree. [But the crying of a child can never be adequate provocation to cause heat of passion resulting in the death of the child.] The State has the burden to prove beyond a reasonable doubt the defendant did not act in the heat of passion.

Fifth, the defendant's act took place on *(or about)* ________ in ________ County.

If you find each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge.

If you find each of these elements has been proven beyond a reasonable doubt except the fourth element, the defendant is guilty of manslaughter in the first degree.

If you find any other element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.20(1). *See also* the Comment to CRIMJIG 11.05.

The distinction between murder and manslaughter is set forth in CRIMJIG 11.04.

In *State v. Auchampach*, 540 N.W.2d 808 (Minn. 1995), the Supreme Court held that when there is sufficient evidence for a jury reasonably to infer that the defendant caused the death of another person in the heat of passion, the State had the burden to prove beyond a reasonable doubt the absence of heat of passion.

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.38

MURDER IN THE THIRD DEGREE—DEPRAVED MIND—ELEMENTS

Replace current Jury Instruction with the following Text, Footnotes, and Comments:

The elements of this crime are:

First, the death of ________ must be proven.

Second, the defendant caused the death of ________.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant's intentional act that caused the death of ________ was eminently dangerous to other persons and was performed without regard for human life. Such an act may not have been specifically intended to cause death, and may not have been specifically directed at the particular person whose death occurred, but it must have been committed in a reckless or wanton manner with the knowledge that someone may be killed and with a heedless disregard of that happening in order to find this element has been satisfied.[2]

Fourth, the defendant's act took place on *(or about)* ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.195(a).

In *State v. Stewart*, 276 N.W.2d 51 (Minn. 1979); *State v. Reilly*, 269 N.W.2d 343 (Minn. 1978); *State v. Hanson*, 286 Minn. 317, 176 N.W.2d 607 (1970); and *State v. Kopetka*, 265 Minn. 371, 121 N.W.2d 783 (1963), it is said that a charge under Minn. Stat. § 609.195 is not appropriate when the act of the defendant is specifically directed at the person who is killed.

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[2] The phrase "depraved mind" has not been included in the elements. This phrase is not susceptible of definition, except in terms of an "eminently dangerous" act and the lack of regard for human life. Since those terms are used, the further use of the words "depraved mind" is unnecessary and possibly prejudicial. The phrase "committed in a reckless or wanton manner" is drawn from *State v. Lowe*, 68 N.W. 1094 (Minn. 1896).

CRIMJIG 11.40

MURDER IN THE THIRD DEGREE—CONTROLLED SUBSTANCES—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the death of (the alleged victim) (________) must be proven.

Second, the defendant sold, gave away, bartered, delivered, exchanged, distributed or administered [INSERT name of Schedule I or II controlled substance.][1]

Third, the defendant knew or believed that the substance sold was a controlled substance.

Fourth, the defendant's sale of ________ was without lawful authority.

Fifth, the defendant's act proximately caused the death of (the alleged victim) (________).

> **"To proximately cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.[2]**

Sixth, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.195(b).

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[1] Whether a particular drug is a Schedule I or II controlled substance under Minn. Stat. § 152.02 is a question of law with which the jury is not concerned. *See Steeves v. State*, 178 N.W.2d 723 (Minn. 1970).

[2] See *State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.42

MURDER OF AN UNBORN CHILD IN THE THIRD DEGREE—DEPRAVED MIND—ELEMENTS

Replace current Jury Instruction with the following Text and Footnote:

The elements of this crime are:

First, the death of an unborn child must be proven. An "unborn child" is the unborn offspring of a human being conceived, but not yet born. The State does not need to prove the unborn child was viable or was known to the defendant.

Second, the defendant caused the death of an unborn child.

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant's intentional act that caused the death of the unborn child, was eminently dangerous to other persons and was performed without regard for human or fetal life.[2] Such an act may not have been specifically intended to cause death, and may not have been specifically directed at the particular unborn child whose death occurred, but it must have been committed in a reckless or wanton manner with the knowledge that someone

may be killed and with a heedless disregard of that happening in order to find this element has been satisfied.

Fourth, the defendant's act took place on *(or about)* ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2663.

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[2] The phrase "depraved mind" has not been included in the elements. This phrase is not susceptible of definition, except in terms of an "eminently dangerous" act and the lack of regard for human life. Since those terms are used, the further use of the words "depraved mind" is unnecessary and possibly prejudicial. The phrase "committed in a reckless or wanton manner" is drawn from *State v. Lowe*, 68 N.W. 1094 (Minn. 1896).

CRIMJIG 11.44

MANSLAUGHTER IN THE FIRST DEGREE—HEAT OF PASSION—ELEMENTS

Replace current Jury Instruction with the following Text, Footnote, and Comments:

The elements of this crime are:

First, the death of ________ must be proven.

Second, the defendant caused the death of ________.

[“To cause” means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant’s acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a “superseding cause” caused the death. A “superseding cause” is a cause that comes after the defendant’s acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

Third, the defendant acted in the heat of passion with the intent (to cause the death of) (to kill) ________ *(or ________)(or another person)*. To find the defendant had an “intent (to cause the death of a person) (to kill),” you must find that the defendant acted with the purpose of causing death, or believed that the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence, but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant’s act be premeditated. It is not an excuse that a killing is committed by a person in the heat of passion, provoked by words or acts such as would provoke a person of ordinary self-

control in like circumstances. ***["A person of ordinary self-control" does not include a person under the influence of intoxicants or a controlled substance.]*** **The heat of passion may cloud a person's reason and weaken will-power, and is a circumstance the law considers in fixing the crime as manslaughter, rather than murder.**

Fourth, the defendant's act took place on ***(or about)*** **________ in ________ County.**

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.20(1).

See also the Comment to CRIMJIG 11.05.

In *State v. Swain*, 269 N.W.2d 707, 715 (Minn. 1978), the Supreme Court held that "a mere finding that the defendant was angry, without some evidence of the victim's acts or words, is insufficient to support a finding of 'heat of passion' manslaughter."

In *State v. Schluter*, 281 N.W.2d 174 (Minn. 1979), the Supreme Court held that the instructions given by the trial court made it clear that the jury could not convict of first-degree manslaughter unless it found that the defendant had intentionally killed the victim of a shooting, and that no separate instruction on the defendant's accident theory was necessary.

In *State v. Kelly*, 435 N.W.2d 807 (Minn. 1989), the Supreme Court held that the trial court properly refused to instruct the jury on heat of passion manslaughter in the prosecution for murder of a suspected car thief. The court held that the mere fact that someone was attempting to steal the defendant's automobile was not sufficient provocation to support a finding of first degree manslaughter, particularly when the defendant was safely in his apartment and alerted of the possible theft by anti-theft device, and the defendant spotted the victim and his companion in the car and began shooting at them as they were running away.

[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.46

MANSLAUGHTER IN THE FIRST DEGREE—WHILE COMMITTING ASSAULT IN THE FIFTH DEGREE—MISDEMEANOR OR GROSS MISDEMEANOR—ELEMENTS

Replace current Jury Instruction with the following Text, Footnote, and Comments:

The elements of this crime are:

First, the death of ________ must be proven.

Second, the defendant caused the death of ________.

[“To cause” means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant’s acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a “superseding cause” caused the death. A “superseding cause” is a cause that comes after the defendant’s acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][1]

[1] Third, the death of ________ was caused by the defendant’s committing or attempting to commit the crime of ________. *[Here the definition and elements of the misdemeanor or gross misdemeanor crime should be given, drawn from the CRIMJIG instructions for that particular crime.]* It is not necessary for the State to prove any intent on the part of the defendant to kill anyone.

Fourth, the defendant committed or attempted to commit the crime of ________ with such force or violence that the death of another person or great bodily harm to an-

other person was reasonably foreseeable. "Great bodily harm" means bodily injury that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

[2] Third, the death of ______ was caused by the defendant committing an assault in the fifth degree. *[Here the definition and elements of assault in the fifth degree should be given, drawn from the CRIMJIG instructions. See* Chapter 13.*]* It is not necessary for the State to prove any intent on the part of the defendant to kill anyone.

***[Fourth][Fifth]*, the defendant's act took place on *(or about)* ______ in ______ County.**

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.20(2).

See Minn. Stat. § 609.224 (fifth degree assault) and Chapter 13 for definition and elements of fifth degree assault.

See also Comment to CRIMJIG 11.02.

In *State v. Stay*, 923 N.W.2d 355 (Minn. App. Feb. 11, 2019), the court held that under Minn. Stat. § 609.20(2), a first-degree manslaughter conviction, predicated on an underlying fifth-degree assault, does not require proof that the defendant also acted "with such force and violence that death of or great bodily harm to any person was reasonably foreseeable."

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.48

MANSLAUGHTER IN THE FIRST DEGREE—CONTROLLED SUBSTANCES—ELEMENTS

Replace the current Jury Instruction with the following text, Footnotes, and Comment:

The elements of manslaughter in the first degree are:

First, the death of ________ must be proven.

Second, the defendant proximately caused[1] the death of ________ by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering ________.[2] "To proximately cause" means to be a substantial causal factor in causing the [death]. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the [death] does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the [death]. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.

Third, the defendant's act took place on *(or about)* ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.20(4).

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[1] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[2] Whether or not the substance in question is a Schedule III, IV, or V controlled substance should be determined by the court. *See* Chap. 20 and M.S.A. § 152.04.

CRIMJIG 11.56

MANSLAUGHTER IN THE SECOND DEGREE—ELEMENTS

Replace current Jury Instruction with the following text, Footnote, and Comments:

The elements of manslaughter in the second degree are:

First, the death of ____ must be proven.

[1] Second, the defendant caused[1] the death of ____, by culpable negligence, whereby the defendant created an unreasonable risk and consciously took a chance of causing death or great bodily harm. "To cause" means to be a substantial causal factor in causing the [death]. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the [death] does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the [death]. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred. "Culpable negligence" is intentional conduct that the defendant may not have intended to be harmful, but that an ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others. "Great bodily harm" means bodily injury that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

[2] Second, the defendant, negligently believing ____ to be a deer or other animal, caused the death of ____ by shooting with a firearm (or other dangerous weapon). (A

"dangerous weapon" includes any device designed as a weapon and capable of producing death or great bodily harm or any other device that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.) The term "negligence" means doing something that a reasonable person would not do, or the failure to do something that a reasonable person would do under like circumstances.

[3] Second, the defendant caused the death of ____ by setting a (spring gun) (pit fall) (deadfall) (snare) or other similar dangerous weapon or device.

[4] Second, the defendant, by negligently or intentionally permitting a ____, (an animal) known by the defendant to have vicious propensities, or to have caused great or substantial bodily harm in the past, to run uncontrolled off the owner's premises, or by negligently failing to keep the ____ (animal) properly confined, caused the death of ____. This element is not proven if you find by a greater weight of the evidence that ____ (the victim) provoked the animal to cause ____'s (the victim's) death.

Third, the defendant's act took place on (or about) ____ in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.205 (1–4).

As to the definition of dangerous weapon, *see* M.S.A. § 609.02 subd. 6 (dangerous weapon); M.S.A § 609.668, subd. 1 (explosive or incendiary device). *See also* the Comment to CRIMJIG 13.10.

In *State v. Landherr*, 542 N.W.2d 686 (Minn. App. 1996), the defendant was charged with attempted manslaughter for the reckless discharge of a firearm. The Court of Appeals held that any an individual who discharges a firearm and injures a person, who does not die, may not be charged with nor convicted of attempted manslaughter in the second degree.

The definition of culpable negligence is drawn from *State v. Frost*, 342 N.W.2d 317 (Minn. 1983) and *State v. Munnell*, 344 N.W.2d 883 (Minn. App. 1984). In *State v. Frost,* the Supreme Court upheld the trial court's definition of culpable negligence as follows:

> Culpable negligence is more than ordinary negligence. It is more than gross negligence. It is gross negligence coupled with an element of recklessness. It is intentional conduct which the actor may not intend to be harmful, but which an ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others.

Frost, 342 N.W.2d at 320.

A stabbing may be culpable negligence. *State v. Spann*, 289 Minn. 497, 182 N.W.2d 873 (1970).

M.S.A. § 609.205 is not unconstitutionally vague or overbroad. *State v. Crace*, 289 N.W.2d 54 (Minn. 1979).

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[1] *State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.61

CRIMINAL VEHICULAR HOMICIDE—DEFINED

Replace current Jury Instruction with the following Text, Footnote, and Comment:

Under Minnesota law, whoever operates a motor vehicle (in a grossly negligent manner)(in a negligent manner while under the influence of alcohol or a controlled substance or any combination of those elements)(while having an alcohol concentration of 0.08 or more)(while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving)(in a negligent manner while under the influence of an intoxicating substance and knows or has reason to know that the substance has the capacity to cause impairment)(in a negligent manner while any amount of ________[1] is present in the person's body), and thereby causes the death of a human being, is guilty of criminal vehicular homicide.

COMMENT

Minn. Stat. § 609.2112, subd. 1(a)(1) to (6).

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[1] A controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

CRIMJIG 11.62

CRIMINAL VEHICULAR HOMICIDE—ELEMENTS

Replace current Jury Instruction with the following Text, Footnotes, and Comments:

The elements of this crime are:

First, the death of ________ must be proven.

Second, the defendant caused the death of ________ by operating a motor vehicle

[1] in a grossly negligent manner.

"In a grossly negligent manner" means with very great negligence or without even scant care.

[2] in a negligent manner while under the influence of (alcohol)(or)(a controlled substance)(or a combination of those elements).

"In a negligent manner" means without using ordinary or reasonable care.

If a person ingests (alcohol) (a controlled substance) (a combination of alcohol and a controlled substance) and is not influenced by it, this element has not been proven. If, as a result of ingesting the (alcohol) (controlled substance) (combination of alcohol and controlled substance), the person's ability or capacity to operate a motor vehicle is impaired, then this element has been proven.

There is no set standard as to the quantity of (alcohol) (a controlled substance) (a combination of alcohol and controlled substance) a person must ingest before being regarded as "under the influence." When a person is so affected by the (alcohol) (controlled substance) (combination of alcohol and controlled substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[1]

[3] while having an alcohol concentration of 0.08 or more.

"While having an alcohol concentration of 0.08 or more" means operating the motor vehicle while (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more)(the number of grams of alcohol per 210 liters of breath is 0.08 or more)(the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[4] while having an alcohol concentration of 0.08 or more as measured within two hours of the time of driving.

"An alcohol concentration of 0.08 or more" means (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more)(the number of grams of alcohol per 210 liters of breath is 0.08 or more)(the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[5] in a negligent manner while under the influence of an intoxicating substance and defendant knew or had reason to know that the substance had the capacity to cause impairment.

"In a negligent manner" means without using ordinary or reasonable care.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[2] [____ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][3]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ____,[4] regardless of whether the substance is marketed for the purpose of human consumption.][5]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][6]

"To know" requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[7]

[6] in a negligent manner while any amount of ________ is present in the person's system.

"In a negligent manner" means without using ordinary or reasonable care. The State does not have to prove the defendant was under the influence of the controlled substance.

["To cause" means to be a substantial causal factor in causing the death to ________. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the

natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][8]

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[9]

[A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water, or in the air.] [The term "motor vehicle" also includes attached trailers.][10]

Third, the defendant's act took place on *(or about)* ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2112.

Minn. Stat. § 169.01, subd. 61, defines "alcohol concentration."

The definition of "gross negligence" is taken from *State v. Meany*, 262 Minn. 491, 115 N.W.2d 247 (1962). Although that case interpreted an earlier statute, it is clear that the term "grossly negligent" was used in the same sense in the 1963 revision. Gross negligence requires no conscious and intentional action that the actor knows or should know creates an unreasonable risk of harm to others. *State v. Brehmer*, 281 Minn. 156, 160 N.W.2d 669 (1968).

The definition of "operating while under the influence" is taken from *Anderson v. State*, 305 N.W.2d 786 (Minn. 1981).

Because careless driving is a lesser-included offense, involving ordinary negligence, of criminal vehicular homicide, which involves gross negligence, it may be reversible error not to submit the lesser-included offense when instructing the jury. *See State v. Al-Naseer*, 690 N.W.2d 744 (Minn. 2005).

In *State v. Munnell*, 344 N.W.2d 883 (Minn. Ct. App. 1984), the trial court properly refused to instruct the jury that the fault of the victim was a defense. However, the Court of Appeals held that the fault of the victim was relevant on the questions of whether the defendant was negligent, and, if so, whether that negligence was the proximate cause of the victim's injuries. In *State v. Nelson*, 806 N.W.2d 558 (Minn. Ct. App. 2011), the Court of Appeals held the victim's intoxication from consumption of alcoholic beverages was relevant to the issue of determining whether defendant's operation of motor vehicle after consuming alcoholic beverages was proximate cause of victim's death.

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[1] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[2] Minn. Stat. § 169A.03, subd. 11a.

[3] Minn. Stat. § 151.01, subd. 5.

[4] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Minn. Stat. § 151.01, subd. 8.

[7] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[8] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[9] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[10] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

CRIMJIG 11.64

CRIMINAL VEHICULAR HOMICIDE LEAVING THE SCENE—DEATH—ELEMENTS

Replace the current Jury Instruction with the following text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant operated a motor vehicle.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[1]

A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on lands, rails, water, or in the air. [The term "motor vehicle" also includes attached trailers].[2]

Second, the defendant caused a collision.

["To cause" means to be a substantial causal factor in causing the death to ________. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][3]

[1] Third, the defendant knew the collision involved (injury to another) (the death of a human being).

"To know" requires only that the actor believes that the specified fact exists.

[2] Third, the defendant failed to stop as close as possible to the scene to reasonably investigate what was struck in the collision.

[1] Fourth, the defendant failed to give or show identification at the scene of the collision.

[2] Fourth, the defendant failed to give notice of the collision to law enforcement by the quickest means of communication.

Fifth, the collision caused the death of ________ (the alleged victim) (an unborn child). [An "unborn child" is the offspring of a human being conceived but not yet born. The State does not need to prove the unborn child was viable or was known to the defendant.]

Sixth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2112, subd. 1(7); § 609.2114, subd. 1(7); § 169.09, subds. 1 and 6.

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[1] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[2] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[3] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.65

CRIMINAL VEHICULAR OPERATION RESULTING IN DEATH OF AN UNBORN CHILD—DEFINED

Replace current Jury Instruction with the following Text, Footnote, and Comment:

Under Minnesota law, whoever operates a motor vehicle (in a grossly negligent manner)(in a negligent manner while under the influence of alcohol or a controlled substance or any combination of those elements)(while having an alcohol concentration of 0.08 or more)(while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving)(in a negligent manner while under the influence of an intoxicating substance and knows or has reason to know that the substance has the capacity to cause impairment)(in a negligent manner while any amount of ________[1] is present in the person's body), and thereby causes the death of an unborn child, is guilty of criminal vehicular operation.

COMMENT

Minn. Stat. § 609.2114, subd. 1(a)(1)–(6).

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[1] A controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

CRIMJIG 11.66

CRIMINAL VEHICULAR OPERATION RESULTING IN DEATH OF AN UNBORN CHILD—ELEMENTS

Replace the current Jury Instruction with the following Text, Footnotes, and Comment:

The elements of this crime are:

First, the death of an unborn child must be proven.

An "unborn child" is the offspring of a human being conceived but not yet born. The State does not need to prove the unborn child was viable or was known to the defendant.[1]

Second, the defendant caused the death of the unborn child by operating a motor vehicle

[1] in a grossly negligent manner.

"Grossly negligent" means with very great negligence or without even scant care.

[2] in a negligent manner while under the influence of (alcohol)(or)(a controlled substance)(or a combination of those elements).

"In a negligent manner" means without using ordinary or reasonable care.

If a person ingests (alcohol) (a controlled substance) (a combination of alcohol and a controlled substance) and is not influenced by it, this element has not been proven. If, as a result of ingesting the (alcohol) (controlled substance) (combination of alcohol and controlled substance), the person's ability or capacity to operate a motor vehicle is impaired, then this element has been proven.

There is no set standard as to the quantity of (alcohol) (a controlled substance) (a combination of alcohol and controlled substance) a person must ingest before being

regarded as "under the influence." When a person is so affected by the (alcohol) (controlled substance) (combination of alcohol and controlled substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[2]

[3] while having an alcohol concentration of 0.08 or more.

"While having an alcohol concentration of 0.08 or more" means while (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more)(the number of grams of alcohol per 210 liters of breath is 0.08 or more)(the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[4] while having an alcohol concentration of 0.08 or more as measured within two hours of the time of driving.

"An alcohol concentration of 0.08 or more" means (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more)(the number of grams of alcohol per 210 liters of breath is 0.08 or more)(the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[5] in a negligent manner while under the influence of an intoxicating substance and defendant knew or had reason to know that the substance has the capacity to cause impairment.

"In a negligent manner" means without using ordinary or reasonable care.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[3] [____ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.][4]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ——,[5] regardless of whether the substance is marketed for the purpose of human consumption.][6]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][7]

"To know" requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[8]

[6] in a negligent manner while any amount of ________[9] is present in the person's system. The State does not have to prove the defendant was under the influence of the controlled substance.

"In a negligent manner" means without using ordinary or reasonable care.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[10]

[A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water or in the air.] [The term "motor vehicle" also includes attached trailers.][11]

["To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][12]

Third, the defendant's act took place on *(or about)* ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2114, subd. 1(a)(1)–(6).

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[1] *See State v. Merrill*, 450 N.W. 2d 318 (Minn. 1990).

[2] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[3] Minn. Stat. § 169A.03, subd. 11a.

[4] Minn. Stat. § 151.01, subd. 5.

[5] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[6] Minn. Stat. § 151.01, subd. 5.

[7] Minn. Stat. § 151.01, subd. 8.

[8] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[9] A controlled substance listed in Schedule I or II, or its metabolites, other than marijuana or tetrahydrocannabinols.

[10] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[11] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[12] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.67

CRIMINAL VEHICULAR OPERATION RESULTING IN GREAT BODILY HARM—DEFINED

Replace current Jury Instruction with the following Text, Footnote, and Comment:

Under Minnesota law, whoever operates a motor vehicle (in a grossly negligent manner) (in a negligent manner while under the influence of alcohol or a controlled substance or any combination of those elements) (while having an alcohol concentration of 0.08 or more) (while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving) (in a negligent manner while under the influence of an intoxicating substance and knows or has reason to know that the substance has the capacity to cause impairment) (in a negligent manner while any amount of ________[1] is present in the person's body), and thereby causes great bodily harm to another, is guilty of a crime.

COMMENT

Minn. Stat. § 609.2113, subd. 1(1) to (6).

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[1] A controlled substance listed in Schedule I or II, or its metabolites, other than marijuana or tetrahydrocannabinols.

CRIMJIG 11.68

CRIMINAL VEHICULAR OPERATION RESULTING IN GREAT BODILY HARM—ELEMENTS

Replace the current Jury Instruction with the following text, Footnotes, and Comments:

The elements of this crime are:

First, the defendant operated a motor vehicle

[1] in a grossly negligent manner.

"Grossly negligent" means with very great negligence or without even scant care.

[2] in a negligent manner while under the influence of (alcohol) (or) (a controlled substance) (or a combination of those elements).

"In a negligent manner" means without using ordinary or reasonable care.

If a person ingests (alcohol) (a controlled substance) (a combination of alcohol and a controlled substance) and is not influenced by it, this element has not been proven. If, as a result of ingesting the (alcohol) (controlled substance) (combination of alcohol and controlled substance), the person's ability or capacity to operate a motor vehicle is impaired, then this element has been proven.

There is no set standard as to the quantity of (alcohol) (a controlled substance) (a combination of alcohol and controlled substance) a person must ingest before being regarded as "under the influence." When a person is so affected by the (alcohol) (controlled substance) (combination of alcohol and controlled substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[1]

[3] while having an alcohol concentration of 0.08 or more.

"Operating a motor vehicle while having an alcohol concentration of 0.08 or more" means operating the motor vehicle while (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more) (the number of grams of alcohol per 210 liters of breath is 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[4] while having an alcohol concentration of 0.08 or more as measured within two hours of the time of driving.

An "alcohol concentration of 0.08 or more" means (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more) (the number of grams of alcohol per 210 liters of breath is 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[5] in a negligent manner while under the influence of an intoxicating substance and defendant knew or had reason to know that the substance has the capacity to cause impairment.

"In a negligent manner" means without using ordinary or reasonable care.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[2] [——— is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to

affect the structure or any function of the bodies of humans or other animals.][3]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ——,[4] regardless of whether the substance is marketed for the purpose of human consumption.][5]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][6]

"To know" requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[7]

[6] in a negligent manner while any amount of ————[8] is present in the person's system. The State does not have to prove the defendant was under the influence of the controlled substance.

"In a negligent manner" means without using ordinary or reasonable care.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[9]

[A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water or in the air.] [The term "motor vehicle" also includes attached trailers].[10]

Second, such operation of the motor vehicle caused great bodily harm to ________.

["To cause" means to be a substantial causal factor in causing great bodily harm to ________. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the great bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the great bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][11]

"Great bodily harm" means bodily harm that creates a high probability of death, or causes a permanent or protracted loss or impairment of the function of any part of the body or other serious bodily harm.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2113, subd. 1(1) to (6).

Minn. Stat. § 169.01, subd. 61, defines "alcohol concentration."

The definition of "gross negligence" is taken from *State v. Meany*, 262 Minn. 491, 115 N.W.2d 247 (1962). Although that case interpreted an earlier statute, it is clear that the term "grossly negligent" was used in the same sense in the 1963 revision. "Gross negligence" requires no conscious and intentional action that the actor knows or should know creates an unreasonable risk of harm to others. *State v. Brehmer*, 160 N.W.2d 669 (Minn. 1968).

A more complete definition or explanation of negligence could be given in certain cases. This might include all or parts of the appropriate Civil Jury Instruction Guides.

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[1] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[2] Minn. Stat. § 169A.03, subd. 11a.

[3] Minn. Stat. § 151.01, subd. 5.

[4] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Minn. Stat. § 151.01, subd. 8.

[7] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[8] A controlled substance listed in Schedule I or II or its metabolites, other than marijuana or tetrahydrocannabinols.

[9] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[10] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[11] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.69

CRIMINAL VEHICULAR OPERATION RESULTING IN GREAT BODILY HARM TO AN UNBORN CHILD—DEFINED

Replace current Jury Instruction with the following Text, Footnote, and Comment:

Under Minnesota law, whoever operates a motor vehicle (in a grossly negligent manner) (in a negligent manner while under the influence of alcohol or a controlled substance or any combination of those elements) (while having an alcohol concentration of 0.08 or more) (while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving) (in a negligent manner while under the influence of an intoxicating substance and knows or has reason to know that the substance has the capacity to cause impairment) (in a negligent manner while any amount of ________[1] is present in the person's body), and thereby causes great bodily harm to an unborn child who is subsequently born alive, is guilty of a crime.

COMMENT

Minn. Stat. § 609.2114, subd. 2(1) to (6).

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[1] A controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

CRIMJIG 11.70

CRIMINAL VEHICULAR OPERATION RESULTING IN GREAT BODILY HARM TO AN UNBORN CHILD—ELEMENTS

Replace the current Jury Instruction with the following Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant operated a motor vehicle

[1] in a grossly negligent manner.

"Grossly negligent" means with very great negligence or without even scant care.

[2] in a negligent manner while under the influence of (alcohol) (or) (a controlled substance) (or a combination of those elements).

"In a negligent manner" means without using ordinary or reasonable care.

If a person ingests (alcohol) (a controlled substance) (a combination of alcohol and a controlled substance) and is not influenced by it, this element has not been proven. If, as a result of ingesting the (alcohol) (controlled substance) (combination of alcohol and controlled substance), the person's ability or capacity to operate a motor vehicle is impaired, then this element has been proven.

There is no set standard as to the quantity of (alcohol) (a controlled substance) (a combination of alcohol and controlled substance) a person must ingest before being regarded as "under the influence." When a person is so affected by the (alcohol) (controlled substance) (combination of alcohol and controlled substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[1]

[3] while having an alcohol concentration of 0.08 or more.

"Operating a motor vehicle while having an alcohol concentration of 0.08 or more" means operating the motor vehicle while (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more) (the number of grams of alcohol per 210 liters of breath is 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[4] while having an alcohol concentration of 0.08 or more as measured within two hours of the time of driving.

"An alcohol concentration of 0.08 or more" means (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more) (the number of grams of alcohol per 210 liters of breath is 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[5] in a negligent manner while under the influence of an intoxicating substance and defendant knew or had reason to know that the substance has the capacity to cause impairment.

"In a negligent manner" means without using ordinary or reasonable care.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[2] [____ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to

affect the structure or any function of the bodies of humans or other animals.][3]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ——,[4] regardless of whether the substance is marketed for the purpose of human consumption.][5]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][6]

"To know" requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[7]

[6] in a negligent manner while any amount of ________[8] is present in the person's system. The State does not have to prove the defendant was under the influence of the controlled substance.

"In a negligent manner" means without using ordinary or reasonable care.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[9]

[A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water or in the air.] [The term "motor vehicle" also includes attached trailers.][10]

Second, such operation of the motor vehicle caused great bodily harm to an unborn child, who was subsequently born alive.

["To cause" means to be a substantial causal factor in causing the great bodily harm to the unborn child. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the great bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the great bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][11]

"Great bodily harm" means bodily harm that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss of impairment of the function of any part of the body or other serious bodily harm.

An "unborn child" means the unborn offspring of a human being conceived, but not yet born. The State does not need to prove the unborn child was viable or was known to the defendant.[12]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a

reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2114, subd. 2(1) to (6).

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[1] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[2] Minn. Stat. § 169A.03, subd. 11a.

[3] Minn. Stat. § 151.01, subd. 5.

[4] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Minn. Stat. § 151.01, subd. 8.

[7] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[8] A controlled substance listed in Schedule I or II, or its metabolites, other than marijuana or tetrahydrocannabinols.

[9] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[10] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[11] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[12] *See State v. Merrill*, 450 N.W. 2d 318 (Minn. 1990).

CRIMJIG 11.71

CRIMINAL VEHICULAR OPERATION RESULTING IN SUBSTANTIAL BODILY HARM—DEFINED

Replace current Jury Instruction with the following Text, Footnote, and Comment:

Under Minnesota law, whoever operates a motor vehicle (in a grossly negligent manner) (in a negligent manner while under the influence of alcohol or a controlled substance or any combination of those elements) (while having an alcohol concentration of 0.08 or more) (while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving) (in a negligent manner while under the influence of an intoxicating substance and knows or has reason to know that the substance has the capacity to cause impairment) (in a negligent manner while any amount of ________[1] is present in the person's body), and thereby causes substantial bodily harm to another, is guilty of a crime.

COMMENT

Minn. Stat. § 609.2113, subd. 2(1) to (6).

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[1] A controlled substance listed in Schedule I or II, or its metabolites, other than marijuana or tetrahydrocannabinols.

CRIMJIG 11.72

CRIMINAL VEHICULAR OPERATION RESULTING IN SUBSTANTIAL BODILY HARM—ELEMENTS

Replace the current Jury Instruction with the following Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant operated a motor vehicle

[1] in a grossly negligent manner.

"Grossly negligent" means with very great negligence or without even scant care.

[2] in a negligent manner while under the influence of (alcohol) (or) (a controlled substance) (or a combination of those elements).

"In a negligent manner" means without using ordinary or reasonable care.

If a person ingests (alcohol) (a controlled substance) (a combination of alcohol and a controlled substance) and is not influenced by it, this element has not been proven. If, as a result of ingesting the (alcohol) (controlled substance) (combination of alcohol and controlled substance), the person's ability or capacity to operate a motor vehicle is impaired, then this element has been proven.

There is no set standard as to the quantity of (alcohol) (a controlled substance) (a combination of alcohol and controlled substance) a person must ingest before being regarded as "under the influence." When a person is so affected by the (alcohol) (controlled substance) (combination of alcohol and controlled substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[1]

[3] while having an alcohol concentration of 0.08 or more.

"Operating a motor vehicle while having an alcohol concentration of 0.08 or more" means operating the motor vehicle while (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more) (the number of grams of alcohol per 210 liters of breath is 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[4] while having an alcohol concentration of 0.08 or more as measured within two hours of the time of driving.

"An alcohol concentration of 0.08 or more" means (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more) (the number of grams of alcohol per 210 liters of breath is 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[5] in a negligent manner while under the influence of an intoxicating substance and defendant knew or had reason to know that the substance has the capacity to cause impairment.

"In a negligent manner" means without using ordinary or reasonable care.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[2] [—— is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to

affect the structure or any function of the bodies of humans or other animals.][3]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ——,[4] regardless of whether the substance is marketed for the purpose of human consumption.][5]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][6]

"To know" requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[7]

[6] in a negligent manner while any amount of ________[8] is present in the person's system. The State does not have to prove the defendant was under the influence of the controlled substance.

"In a negligent manner" means without using ordinary or reasonable care.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[9]

[A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water or in the air.] [The term "motor vehicle" also includes attached trailers].[10]

Second, such operation of the motor vehicle caused substantial bodily harm to ________.

["To cause" means to be a substantial causal factor in causing the substantial bodily harm to ________. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the substantial bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the substantial bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][11]

"Substantial bodily harm" means bodily harm that involves a temporary but substantial disfigurement, or causes temporary but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2113, subd. 2(1) to (6).

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[1] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[2] Minn. Stat. § 169A.03, subd. 11a.

[3] Minn. Stat. § 151.01, subd. 5.

[4] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Minn. Stat. § 151.01, subd. 8.

[7] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[8] A controlled substance listed in Schedule I or II, or its metabolites, other than marijuana or tetrahydrocannabinols.

[9] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[10] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[11] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.73

CRIMINAL VEHICULAR OPERATION RESULTING IN BODILY HARM—DEFINED

Replace current Jury Instruction with the following Text, Footnote, and Comment:

Under Minnesota law, whoever operates a motor vehicle (in a grossly negligent manner) (in a negligent manner while under the influence of alcohol or a controlled substance or any combination of those elements) (while having an alcohol concentration of 0.08 or more) (while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving) (in a negligent manner while under the influence of an intoxicating substance and knows or has reason to know that the substance has the capacity to cause impairment) (in a negligent manner while any amount of ________[1] is present in the person's body), and thereby causes bodily harm to another, is guilty of a crime.

COMMENT

Minn. Stat. § 609.2113, subd. 3(1) to (6).

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[1] A controlled substance listed in Schedule I or II, or its metabolites, other than marijuana or tetrahydrocannabinols.

CRIMJIG 11.74

CRIMINAL VEHICULAR OPERATION RESULTING IN BODILY HARM—ELEMENTS

Replace the current Jury Instruction with the following Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant operated a motor vehicle

[1] in a grossly negligent manner.

"Grossly negligent" means with very great negligence or without even scant care.

[2] in a negligent manner while under the influence of (alcohol) (or) (a controlled substance) (or a combination of those elements).

"In a negligent manner" means without using ordinary or reasonable care.

If a person ingests (alcohol) (a controlled substance) (a combination of alcohol and a controlled substance) and is not influenced by it, this element has not been proven. If, as a result of ingesting the (alcohol) (controlled substance) (combination of alcohol and controlled substance), the person's ability or capacity to operate a motor vehicle is impaired, then this element has been proven.

There is no set standard as to the quantity of (alcohol) (a controlled substance) (a combination of alcohol and controlled substance) a person must ingest before being regarded as "under the influence." When a person is so affected by the (alcohol) (controlled substance) (combination of alcohol and controlled substance) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[1]

[3] while having an alcohol concentration of 0.08 or more.

"Operating a motor vehicle while having an alcohol concentration of 0.08 or more" means operating the motor vehicle while (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more) (the number of grams of alcohol per 210 liters of breath is 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[4] while having an alcohol concentration of 0.08 or more as measured within two hours of the time of driving.

"An alcohol concentration of 0.08 or more" means (the number of grams of alcohol per 100 milliliters of blood is 0.08 or more) (the number of grams of alcohol per 210 liters of breath is 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine is 0.08 or more).

[5] in a negligent manner while under the influence of an intoxicating substance and defendant knew or had reason to know that the substance has the capacity to cause impairment.

"In a negligent manner" means without using ordinary or reasonable care.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.[2] [—— is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to

affect the structure or any function of the bodies of humans or other animals.][3]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of ——,[4] regardless of whether the substance is marketed for the purpose of human consumption.][5]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.][6]

"To know" requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."[7]

[6] in a negligent manner while any amount of ________[8] is present in the person's system. The State does not have to prove the defendant was under the influence of the controlled substance.

"In a negligent manner" means without using ordinary or reasonable care.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[9]

[A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water or in the air.] [The term "motor vehicle" also includes attached trailers].[10]

Second, such operation of the motor vehicle caused bodily harm to ______.

["To cause" means to be a substantial causal factor in causing the bodily harm to ______. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][11]

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

Third, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2113, subd. 3(1) to (6).

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[1] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222

N.W. 909 (Minn. 1929).

[2] Minn. Stat. § 169A.03, subd. 11a.

[3] Minn. Stat. § 151.01, subd. 5.

[4] Insert name of one or more substance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

[5] Minn. Stat. § 151.01, subd. 5.

[6] Minn. Stat. § 151.01, subd. 8.

[7] *See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

[8] A controlled substance listed in Schedule I or II, or its metabolites, other than marijuana or tetrahydrocannabinols.

[9] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[10] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[11] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.76

CRIMINAL VEHICULAR OPERATION—LEAVING THE SCENE—GREAT BODILY HARM, SUBSTANTIAL BODILY HARM, BODILY HARM—ELEMENTS

Replace current Jury Instruction with the following Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant operated a motor vehicle.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[1]

A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on lands, rails, water, or in the air. [The term "motor vehicle" also includes attached trailers].[2]

Second, the defendant was involved in a collision.

Third, the defendant's driving caused the collision.

["To cause" means to be a substantial causal factor in causing the [great bodily harm] [substantial bodily harm] [bodily harm] to ________. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the [great bodily harm] [substantial bodily harm] [bodily harm] does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the [great bodily harm] [substantial bodily harm] [bodily harm]. A "superseding cause" is a cause that comes after the

defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][3]

Fourth, the defendant knew or had reason to know the collision involved injury to a person.

"To know" requires only that the actor believes that the specified fact exists.

[1] Fifth, the defendant failed to stop the vehicle at the scene of the collision or as close as possible to the scene and reasonably investigate what was struck.

[2] Fifth, the defendant failed to give or show identification at the scene of the collision.

[3] Fifth, the defendant failed to give notice of the collision [to law enforcement authorities] by the quickest means of communication.

[A] Sixth, ________ (the alleged victim) (an unborn child subsequently born alive) sustained great bodily harm as a result of the collision.

"Great bodily harm" means bodily harm that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss of impairment of the function of any part of the body or other serious bodily harm. [An unborn child means the unborn offspring of a human being conceived, but not yet born The State does not need to prove the unborn child was viable or was known to the defendant.]

[B] Sixth, ________ (the alleged victim) sustained substantial bodily harm as a result of the collision. "Substantial bodily harm" means bodily harm that involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.

[C] Sixth, ______ (the alleged victim) sustained bodily harm as a result of the collision. "Bodily harm" means physical pain or injury, illness or any impairment of physical condition.

Seventh, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2113, subd. 1(7), subd. 2(7), subd. 3(7); § 609.2114, subd. 1(7).

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[1] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[2] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[3] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.78

CRIMINAL VEHICULAR OPERATION—LEAVING THE SCENE—SUBSTANTIAL BODILY HARM—ELEMENTS

Replace current Jury Instruction with the following text and Footnotes, and Comment:

The elements of this crime are:

First, ________ sustained substantial bodily harm as a result of a collision in which the defendant was involved as the driver of a motor vehicle.

"Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or causes fracture of any bodily member.

A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on lands, rails, water, or in the air. [The term "motor vehicle" also includes attached trailers].[1]

[1] Second, the defendant failed to stop the vehicle at the scene of the collision or as close as possible to the scene and reasonably investigate what was struck.

[2] Second, the defendant failed to give or show identification at the scene of the collision.

[3] Second, the defendant failed to give notice of the collision [to law enforcement authorities] by the quickest means of communication.

Third, the defendant's driving caused the collision.

["To cause" means to be a substantial causal factor in causing the collision. The defendant is criminally liable for

all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the collision does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the collision. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][2]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2113, subd. 2(7).

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[1] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[2] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.87

CRIMINAL VEHICULAR HOMICIDE—FAILURE TO MAINTAIN—DEATH—ELEMENTS

Replace the current Jury Instruction with the following text and Footnotes:

The elements of this crime are:

First, the defendant operated a motor vehicle.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[1]

A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on lands, rails, water, or in the air. [The term "motor vehicle" also includes attached trailers].[2]

Second, the defendant had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained.

Third, the defendant had actual knowledge that no remedial action has been taken.

Fourth, the driver had reason to know the defect created a present danger to others.

Fifth, the death of ________ (the alleged victim) (an unborn child) was caused by the defective maintenance.

["To cause" means to be a substantial causal factor in causing the death to ________. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other

causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][3]

Sixth, the defendant's act took place on (or about) _______ in _______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2112, subd. 1(8); § 609.2114, subd. 1(8).

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[1] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[2] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[3] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CRIMJIG 11.88

CRIMINAL VEHICULAR HOMICIDE—FAILURE TO MAINTAIN—BODILY HARM—DEFINED

Replace current Jury Instruction with the following text and Comment:

Under Minnesota law, whoever operates a motor vehicle having actual knowledge that a peace officer has previously issued a citation or warning that the motor vehicle was defectively maintained and having actual knowledge that no remedial action has been taken, and the driver has reason to know the defect creates a present danger to others, and the bodily harm of (any person) (an unborn child) is caused by the defective maintenance is guilty of a crime.

COMMENT

Minn. Stat. § 609.2113, subd. 1(8); subd. 2(8); and subd.3; Minn. Stat. § 609.2114, subd. 2(8).

CRIMJIG 11.89

CRIMINAL VEHICULAR HOMICIDE—FAILURE TO MAINTAIN—BODILY HARM—ELEMENTS

Replace current Jury Instruction with the following new Title, text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant operated a motor vehicle.

"To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.[1]

A "motor vehicle" is a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on lands, rails, water, or in the air. [The term "motor vehicle" also includes attached trailers].[2]

Second, the defendant had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained.

Third, the defendant had actual knowledge that no remedial action had been taken.

Fourth, the driver had reason to know the defect created a present danger to others.

[Fifth, great bodily harm to ________ (the alleged victim) (an unborn child subsequently born alive) was caused by the defective maintenance. "Great bodily harm" means bodily harm that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss of impairment of the function of any part of the body or other serious bodily harm.]

["To cause" means to be a substantial causal factor in causing the great bodily harm. The defendant is criminally

liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the great bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the great bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][3]

[An unborn child means the unborn offspring of a human being conceived, but not yet born.]

[Fifth, substantial bodily harm to ________ (the alleged victim) was caused by the defective maintenance. "Substantial bodily harm" means bodily harm that involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.]

["To cause" means to be a substantial causal factor in causing the substantial bodily harm. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the substantial bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the substantial bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][4]

[Fifth, bodily harm to ________ (the alleged victim) was

caused by the defective maintenance. "Bodily harm" means physical pain or injury, illness or any impairment of physical condition.]

["To cause" means to be a substantial causal factor in causing the bodily harm. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.][5]

Sixth, the defendant's act took place on (or about) _______ in _______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2113, subds. 1(8), 2(8), 3(8); § 609.2114, subd. 2(8).

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[1] *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

[2] *See* Minn. Stat. § 609.2111(b) (applying "motor vehicle" definition from section 609.52, subdivision 1, and including attached trailers).

[3] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[4] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[5] *See State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

CHAPTER 12

SEX CRIMES AND FAMILY CRIMES

CRIMJIG 12.01

"FORCE" AND "COERCION" DEFINED FOR CRIMINAL SEXUAL CONDUCT

Replace the current Jury Instruction and Comments with the following text and Comments:

"Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm, or commission or threat of any other crime by the actor against another person, which causes the other person to reasonably believe that the actor has the present ability to execute the threat, and, if the actor does not have a significant relationship to the other person, also causes the other person to submit.

"Coercion" means the use by the actor of words or circumstances that cause another person reasonably to fear that the actor will inflict bodily harm upon that person [or another], or the use by the actor of confinement or superior size or strength against another person which causes that person to submit to sexual penetration or sexual contact against that person's will. Proof of coercion does not require proof of a specific act or threat.

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

COMMENT

Minn. Stat. §§ 609.341, subds. 3, 14; 609.02, subd. 7.

CRIMJIG 12.04

CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE—SEXUAL PENETRATION—COMPLAINANT UNDERAGE—DEFINED *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever engages in sexual penetration with another person

[1] who is under the age of 13, when the actor is more than 36 months older than the other person,

[2] under the age of 16, when the actor is more than 48 months older than the other person and is in a position of authority over that person,

is guilty of a crime.

COMMENT

Minn. Stat. § 609.342, subd. 1(a), (b).

CRIMJIG 12.05

CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE—SEXUAL PENETRATION—COMPLAINANT UNDERAGE—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant intentionally sexually penetrated ________.

[1] Sexual intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis into the female genital opening.

[2] Fellatio constitutes sexual penetration if there is any contact between the penis of one person and the mouth, tongue or lips of another person.

[3] Cunnilingus constitutes sexual penetration if there is any contact between the female genital opening of one person and the mouth, tongue, or lips of another person.

[4] Anal intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis of one person into the anal opening of another person.

[5] Any intrusion, however slight, of any part of one person's body (or of any object held by one person) into the genital or anal openings of another person's body constitutes sexual penetration.

[Emission of semen is not necessary to accomplish sexual penetration.]

[1] **Second**, at the time of the defendant's act, ________ was under thirteen years of age.

Third, the defendant was more than 36 months older than ______.

[2] **Second**, at the time of the defendant's act, ______ was at least thirteen but less than 16 years of age.

Third, the defendant was more than 48 months older than ______.

Fourth, the defendant was in a current or recent position of authority over ______.[1]

A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.[2]

(Fourth) **(Fifth)**, the defendant's act took place on (or about) ______, in ______ County.

Consent is not a defense to this charge.

It is immaterial whether or not the sexual penetration was coerced.

Mistake as to ______'s age is not a defense to this charge.

If you find that each of these elements has been proven beyond a reasonable doubt, defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, defendant is not guilty.

COMMENT

Minn. Stat. § 609.342, subd. 1(a), (b).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 12.09

CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE—SIGNIFICANT RELATIONSHIP—COMPLAINANT UNDER 16—USE OF FORCE—ELEMENTS

COMMENT

Replace the first paragraph to the Comment with the following text:

See M.S.A. § 609.341, subd. 15 for definition of "significant relationship." In *State v. Reyes*, 890 N.W.2d 406 (Minn. App. 2017) the Court of Appeals held that stepgrandfathers are included in the definition of "significant relationship."

CRIMJIG 12.11

CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE—COMPLAINANT UNDER 16—SIGNIFICANT RELATIONSHIP—ELEMENTS

COMMENT

Replace the first paragraph to the Comment with the following text:

See M.S.A. § 609.341, subd. 15 for definition of "significant relationship." In *State v. Reyes*, 890 N.W.2d 406 (Minn. App. 2017) the Court of Appeals held that stepgrandfathers are included in the definition of "significant relationship."

CRIMJIG 12.14

CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE—COMPLAINANT UNDERAGE—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever, with sexual or aggressive intent, engages in sexual contact with another person

[1] under the age of 13, when the actor is more than 36 months older than that person,

[2] under the age of 16, when the actor is more than 48 months older and in a position of authority over that person,

is guilty of a crime.

COMMENT

Minn. Stat. § 609.343, subd. 1(a), (b).

CRIMJIG 12.15

CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE—COMPLAINANT UNDERAGE—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant intentionally touched ________'s intimate parts or the clothing over the immediate area of ________'s intimate parts, or caused the touching of ________'s intimate parts or the clothing over the immediate area of ________'s intimate parts. The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.

[**First**, the defendant intentionally touched ________'s body or the clothing covering ________'s body with seminal fluid or sperm.]

Consent is not a defense to this charge.

Second, the defendant's act was committed with sexual or aggressive intent.

[1] **Third**, at the time of the defendant's act, ________was under thirteen years of age. Mistake as to (________'s) (the victim's) age is not a defense.

It is immaterial whether or not the sexual contact was coerced.

Fourth, the defendant was more than 36 months older than ________.

[2] **Third**, at the time of the defendant's act, ________ was at least thirteen and under sixteen years of age. Mistake as to (________'s) (the victim's) age is not a defense.

Fourth, the defendant was more than 48 months older than ________.

Fifth, the defendant was in a current or recent position of authority over ________.[1]

A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.[2]

(**Fifth**) (**Sixth**), the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.343, subd. 1(a), (b).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 12.19

CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE—SIGNIFICANT RELATIONSHIP—COMPLAINANT UNDER 16—ELEMENTS

COMMENT

Replace the first paragraph to the Comment with the following text:

See M.S.A. § 609.341, subd. 15 for definition of “significant relationship.” In *State v. Reyes*, 890 N.W.2d 406 (Minn. App. 2017) the Court of Appeals held that stepgrandfathers are included in the definition of “significant relationship.”

CRIMJIG 12.24

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—COMPLAINANT UNDERAGE—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever engages in sexual penetration with another person

[1] under the age of 13, when the actor is no more than 36 months older than that person,

[2] under the age of 16, when the actor is more than 24 months older than that person,

[3] who is at least 16 years of age but less than 18 years of age, when the actor is more than 48 months older and in a position of authority over the other person,

is guilty of a crime.

COMMENT

Minn. Stat. § 609.344, subd. 1(a), (b), (e).

CRIMJIG 12.25

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—COMPLAINANT UNDERAGE—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant intentionally sexually penetrated ________. Consent is not a defense to this charge.

[1] **Sexual intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis into the female genital opening.**

[2] **Fellatio constitutes sexual penetration if there is any contact between the penis of one person and the mouth, tongue or lips of another person.**

[3] **Cunnilingus constitutes sexual penetration if there is any contact between the female genital opening of one person and the mouth, tongue, or lips of another person.**

[4] **Anal intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis of one person into the anal opening of another person.**

[5] **Any intrusion, however slight, of any part of one person's body (or of any object held by one person) into the genital or anal openings of another person's body constitutes sexual penetration.**

[Emission of semen is not necessary to accomplish sexual penetration.]

[1] **Second**, at the time of the defendant's act, ________

had not reached (his) (her) thirteenth birthday. Mistake as to (________'s) (the victim's) age is not a defense.

Third, the defendant was not more than 36 months older than ________.

[2] **Second**, at the time of the defendant's act, ________ was at least 13 but had not reached (his) (her) sixteenth birthday.

Third, the defendant was more than 24 months older than ________.

The State is not required to prove that the sexual penetration was coerced.

[3] **Second**, at the time of the defendant's act, ________ was at least 16 years old but had not reached (his) (her) eighteenth birthday. Mistake as to ('s) (the victim's) age is not a defense.

Third, the defendant was more than 48 months older than ________.

Fourth, the defendant was in a current or recent position of authority over ________.[1]

> **A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.[2]**

The State is not required to prove that the sexual penetration was coerced.

[Fourth][Fifth], the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.344, subd. 1(a), (b), (e).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 12.29

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—SIGNIFICANT RELATIONSHIP—COMPLAINANT 16 TO 18—ELEMENTS

COMMENT

Replace the first paragraph to the Comment with the following text:

See M.S.A. § 609.341, subd. 15 for definition of "significant relationship." In *State v. Reyes*, 890 N.W.2d 406 (Minn. App. 2017) the Court of Appeals held that stepgrandfathers are included in the definition of "significant relationship."

CRIMJIG 12.39

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—COMPLAINANT UNDERAGE—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever, with sexual or aggressive intent, engages in sexual contact with another person

[1] under the age of 13, when the actor is no more than 36 months older than that person,

[2] under the age of 16, when the actor is more than 48 months older than that person or is in a position of authority over that person,

[3] at least 16 years of age but less than 18, when the actor is more than 48 months older and in a position of authority over the person,

is guilty of a crime.

COMMENT

Minn. Stat. § 609.345, subd. 1(a), (b), (e).

CRIMJIG 12.40

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—COMPLAINANT UNDERAGE—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant intentionally touched ________'s intimate parts or the clothing over the immediate area of ________'s intimate parts [by the use of a current or recent position of authority].

The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.

[A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.]

[**First**, the defendant intentionally touched ________'s body or the clothing covering ________'s body with seminal fluid or sperm.]

Second, the defendant's act was committed with sexual or aggressive intent.

[1] **Third**, at the time of the defendant's act, ________ had not reached (his) (her) thirteenth birthday.

Fourth, the defendant was not more than 36 months older than ________.

Consent is not a defense to this charge.

Mistake as to (________'s) (the victim's) age is not a defense.

It is immaterial whether or not the sexual contact was coerced.

[2] **Third**, at the time of the defendant's act, ________ was at least 13 but had not reached (his) (her) sixteenth birthday.

[Mistake as to (________'s) (the victim's) age is not a defense.][1]

Fourth, the defendant (was more than 48 months older than ________).

[3] **Third**, at the time of the defendant's act, ________ was at least 13 but had not reached (his) (her) sixteenth birthday.

[Mistake as to (________)'s (the victim's) age is not a defense.[2]

Fourth, the defendant was in a current or recent position of authority over ________.[3]

> **A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.**[4]

Consent is not a defense to this charge.

It is immaterial whether or not the sexual contact was coerced.

[4] **Third**, at the time of the defendant's act, ________ was at least 16 years of age but had not reached (his) (her) eighteenth birthday.

Fourth, the defendant was more than 48 months older than ________.

Fifth, the defendant was in a current or recent position of authority over ________.

A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.

Consent is not a defense to this charge.

Mistake as to (________'s) (the victim's) age is not a defense.

It is immaterial whether or not the sexual contact was coerced.

(Fifth) (Sixth), the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.345, subd. 1(a), (b), (e).

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[1] The affirmative defense of mistake as to age is available when the defendant is no more than 120 months older than the victim. *See* Minn. Stat. § 609.345, subd. 1(b).

[2] The defense of mistake as to age is available when the defendant is no more than 120 months older than the victim. *See* Minn. Stat. § 609.345, subd. 1(b).

[3] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[4] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 12.42

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—SIGNIFICANT RELATIONSHIP—COMPLAINANT 16 TO 18—USE OF FORCE, ETC.—ELEMENTS

COMMENT

Replace the first paragraph to the Comment with the following text:

See M.S.A. § 609.341, subd. 15 for definition of "significant relationship." In *State v. Reyes*, 890 N.W.2d 406 (Minn. App. 2017) the Court of Appeals held that stepgrandfathers are included in the definition of "significant relationship."

CRIMJIG 12.44

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—SIGNIFICANT RELATIONSHIP—COMPLAINANT 16 TO 18—ELEMENTS

COMMENT

Replace the first paragraph to the Comment with the following text:

See M.S.A. § 609.341, subd. 15 for definition of "significant relationship." In *State v. Reyes*, 890 N.W.2d 406 (Minn. App. 2017) the Court of Appeals held that stepgrandfathers are included in the definition of "significant relationship."

CRIMJIG 12.52

CRIMINAL SEXUAL CONDUCT IN THE FIFTH DEGREE—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

[1] **First**, the defendant intentionally touched (the alleged victim's) (________'s) intimate parts or the clothing covering the immediate area of (the alleged victim's) (________'s) intimate parts.

> **"Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result. In addition, the actor must have knowledge of those facts which are necessary to make the actor's conduct criminal and which are set forth after the word "intentionally."**[1]

> **"Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast.**[2]

[2] **First**, the defendant intentionally touched (the alleged victim's) (________'s) body or the clothing covering (the alleged victim's) (________'s) body with seminal fluid or sperm.

> **"Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result. In addition, the actor must have knowledge of those facts which are necessary to make the actor's conduct criminal and which are set forth after the word "intentionally."**[3]

[3] **First**, the defendant intentionally removed or attempted to remove the clothing covering (the alleged victim's) (________'s) intimate parts or undergarments.

> **"Intentionally" means that the actor either has a**

purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result. In addition, the actor must have knowledge of those facts which are necessary to make the actor's conduct criminal and which are set forth after the word "intentionally."[4]

"Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast.[5]

[4] **First**, the defendant caused (the alleged victim) (________) to touch the defendant's intimate parts.

"To cause" means to be a substantial causal factor in causing the touching. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the touching does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the touching. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.[6]

"Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast.[7]

Second, the defendant's act was done with sexual or aggressive intent.

Third, the defendant's act occurred without the consent of (the alleged victim) (________).

"Consent" means a person's words or overt actions that indicate a freely given present agreement to perform a particular sexual act with the actor.[8]

Fourth, the defendant's act took place on (or about) ______, in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

Special Verdict Form on Prior Convictions—Bifurcated Trial

If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):

Was the defendant convicted or adjudicated delinquent of the first of two or more previous convictions or adjudications under this statute involving non-consensual sexual contact, or Minn. Stat. § 617.23(b)(1), or a statute from another state in conformity with either of those sections in the last seven years?

Was the defendant previously convicted or adjudicated delinquent of masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know that the minor was present, within the last seven years?

Was the defendant previously convicted of a violation of [one of the offenses listed in Minn. Stat. § 609.3451, subd. 3(b)]?

If you find the fact has been proven beyond a reasonable doubt, you should answer "yes." If you find the fact has not been proven beyond a reasonable doubt, you should answer "no."

COMMENT

Minn. Stat. § 609.3451.

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[1] Minn. Stat. § 609.02, subd. 9(3).

[2] Minn. Stat. § 609.341, subd. 5.

[3] Minn. Stat. § 609.02, subd. 9(3).

[4] *Id.*

[5] Minn. Stat. § 609.341, subd. 5.

[6] *State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[7] Minn. Stat. § 609.341, subd. 5.

[8] Minn. Stat. § 609.341, subd. 4(a).

CRIMJIG 12.54

CRIMINAL SEXUAL CONDUCT IN THE FIFTH DEGREE—VICTIM UNDER 16—ELEMENTS

Replace current Jury Instruction with the following text, Footnotes, and Comments:

The elements of criminal sexual conduct in the fifth degree are:

First, the defendant engaged in masturbation or lewd exhibition of the genitals.

Second, the defendant's act took place in the presence of ________. "In the presence of" means that it was committed [in a place where (a minor) (________) was reasonably capable of viewing it] [where a reasonable person would have reason to know that a minor might see it]. ["In the presence of" includes an act committed during simultaneous electronic communications with ________.][1]

Third, ________ was under the age of 16 at the time defendant's act took place.

Fourth, the defendant knew or had reason to know ________ was present at the time of the act.

[Fifth, the defendant has previously been convicted of or adjudicated delinquent of a violation of the first of two or more previous convictions under this statute involving non-consensual sexual contact, or Minn. Stat. § 617.23(b)(1), or a statute from another State in conformity with either of those sections within the last seven years.]

[Fifth, the defendant has previously been convicted or adjudicated delinquent of masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know that the minor was present, within the last seven years.]

[Fifth, the defendant has been previously convicted of

a violation of [the offenses listed in Minn. Stat. § 609.3451, subd. 3(b)].][2]

[Fifth] [Sixth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.3451(2).

See Comment to CRIMJIG 12.88 for a definition of the term "lewd."

Note that whether a statute from another state is in conformity with the statutory sections is a question of law for the judge to determine and not a jury question.

The bracketed fifth element should be used if a felony level offense has been charged, based upon prior conviction or delinquency adjudication. However, the trial court must allow the defendant to stipulate to the prior offense and remove the issue from the jury in order to prevent introduction of potentially prejudicial evidence. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Under Minn. R. Crim. Proc. 11.04, subd. 2, the trial court can also remove the issue of prior convictions if the defendant does not stipulate and the court feels that the introduction of such evidence would be unduly prejudicial. The Court should bifurcate the trial and submit the prior convictions as interrogatories to the jury. *See* CRIMJIG 12.52.

In *State v. Stevenson*, 656 N.W.2d 235 (Minn. 2003), the Supreme Court held that the phrase "in the presence of a minor" meant that the conduct must have been reasonably capable of being viewed by a minor. In *Stevenson*, the defendant was seated in his pick-up truck, masturbating, in a public park.

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[1] *State v. Decker*, 916 N.W.2d 385 (Minn. 2018).

[2] The defendant can stipulate to the prior conviction and remove this element from the jury's consideration. *See State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

CRIMJIG 12.55

CRIMINAL SEXUAL CONDUCT IN THE THIRD AND FOURTH DEGREES—COMPLAINANT UNDERAGE—MISTAKE OF AGE AS A DEFENSE

Replace the current instruction with the following text:

If the defendant reasonably believed that ______ was 16 years of age or older, the defendant is not guilty of criminal sexual conduct in the (third) (or) (fourth) degree provided the defendant is no more than 120 months older than ______. The defendant has the burden of proving the mistake of age defense by a preponderance of the evidence. If you find that it is more likely true than not true that the defendant reasonably believed ______ was 16 years of age or older, the defendant is not guilty of the crime of criminal sexual conduct in the (third)(fourth) degree. If you do not find that this is more likely true than not true, the defense of mistake of age has not been proven.

COMMENT

Replace the current paragraphs of the Comment with the following text:

M.S.A. §§ 609.344, subd. 1(b); 609.345, subd. 1(b).

The Committee notes that this defense is applied only to the subdivisions listed here and may not be consistent with other provisions of the statutes. *But see State v. Moser*, 884 N.W.2d 890, 904 (Minn. App. 2016) where the Court of Appeals held “in cases where the defendant has no in-person contact with the child and the child represents to the defendant that he or she is 16 or older, Minnesota Statutes section 609.352, subdivisions 2 and 3(a), violate due process by imposing strict liability and eliminating a mistake-of-age defense.”

CRIMJIG 12.56

CRIMINAL SEXUAL CONDUCT—DEFENDANT NOT GUILTY IF COHABITING WITH OR MARRIED TO COMPLAINANT

Replace the current Comment:

COMMENT

Minn. Stat. § 609.349.

Minn. Stat. § 609.349, which was repealed effective July 1, 2019, provided that certain subdivisions of Minn. Stat. §§ 609.342, 609.343, 609.344, and 609.345 are not violated where the defendant and the complainant are either married or cohabiting.

CRIMJIG 12.66

PROSTITUTION—ENGAGES IN PROSTITUTION, HIRES, OFFERS, OR AGREES TO SEX—DEFINED

Replace the current Jury Instruction with the following text:

The statutes of Minnesota provide that whoever intentionally

[1] engages in prostitution with an individual (under the age of 13 years) (under the age of 16 years but at least 13 years) (under the age of 18 years but at least 16 years) (18 years of age or above)

[2] hires, offers, or agrees to hire an individual (under the age of 13 years) (under the age of 16 years but at least 13 years) (under the age of 18 years but at least 16 years) (18 years of age or above) to engage in sexual penetration or sexual contact

[3] hires, offers, or agrees to hire an individual whom the defendant reasonably believed to be (under the age of 13 years) (under the age of 16 years but at least 13 years) (under the age of 18 years but at least 16 years) to engage in sexual penetration or sexual contact

is guilty of a crime.

COMMENT

Replace the current paragraph of the Comment with the following text:

M.S.A. § 609.324, subds. 1, 3. *See* Comment to CRIMJIG 12.58.

CRIMJIG 12.67

PROSTITUTION—ENGAGES IN PROSTITUTION, HIRES, OFFERS, OR AGREES TO SEX—ELEMENTS

Replace the current Jury Instruction with the following text:

The elements of the crime are:

[1] First, ________ had not reached (his) (her) thirteenth birthday.

[a] Second, the defendant intentionally engaged in prostitution with ________.

[b] Second, the defendant intentionally hired, offered, or agreed to hire ________ to engage in sexual penetration or sexual contact. [Here insert the definitions of "sexual penetration" and "sexual contact." *See* M.S.A. § 609.321, subds. 10, 11.]

[2] First, the defendant reasonably believed ____ had not reached (his) (her) thirteenth birthday.

Second, the defendant intentionally hired, offered, or agreed to hire ____ to engage in sexual penetration or sexual contact. [Here insert the definitions of "sexual penetration" and "sexual contact." *See* M.S.A. § 609.321, subds. 10, 11.]

[3] First, ________ had not reached (his) (her) sixteenth birthday but had at least reached (his) (her) thirteenth birthday.

[a] Second, the defendant intentionally engaged in prostitution with ________.

[b] Second, the defendant intentionally hired, offered, or agreed to hire ________ to engage in sexual penetration or sexual contact. [Here insert the definitions of "sexual penetration" and "sexual contact." *See* M.S.A. § 609.321, subds. 10, 11.]

[4] First, the defendant reasonably believed ______ had not reached (his) (her) sixteenth birthday but had at least reached (his) (her) thirteenth birthday.

Second, the defendant intentionally hired, offered, or agreed to hire ____ to engage in sexual penetration or sexual contact. [Here insert the definitions of "sexual penetration" and "sexual contact." *See* M.S.A. § 609.321, subds. 10, 11.]

[5] First, ______ had not reached (his) (her) eighteenth birthday but had at least reached (his) (her) sixteenth birthday.

[a] Second, the defendant intentionally engaged in prostitution with ______.

[b] Second, the defendant intentionally hired, offered, or agreed to hire ______ to engage in sexual penetration or sexual contact. [Here insert the definitions of "sexual penetration" and "sexual contact." *See* M.S.A. § 609.321, subds. 10, 11.]

[6] First, the defendant reasonably believed ______ had not reached (his) (her) eighteenth birthday but had at least reached (his) (her) sixteenth birthday.

Second, the defendant intentionally hired, offered, or agreed to hire ____ to engage in sexual penetration or sexual contact. [Here insert the definitions of "sexual penetration" and "sexual contact." *See* M.S.A. § 609.321, subds. 10, 11.]

[7] First, ______ was at least eighteen years old.

[a] Second, the defendant intentionally engaged in prostitution with ______.

[b] Second, the defendant intentionally hired, offered, or agreed to hire ______ to engage in sexual penetration or sexual contact. [Here insert the definitions

of "sexual penetration" and "sexual contact." *See* M.S.A. § 609.321, subds. 10, 11.]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 12.74

PROSTITUTION—ADDITIONAL ISSUE—SCHOOL ZONE/PARK ZONE

n. 1.

Replace footnote one with the following text:

See Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

CRIMJIG 12.76

SOLICITATION OF A CHILD TO ENGAGE IN SEXUAL CONDUCT—ELEMENTS

Replace the current Jury Instruction with the following text:

The elements of solicitation of a child to engage in sexual conduct are:

First, the defendant was eighteen years of age or older.

Second, ____ was fifteen years of age or younger. Mistake as to ____'s age is not a defense.[1]

Third, the defendant solicited ______ to engage in sexual conduct. "To solicit" means to command, entreat, or attempt to persuade (in person) (by telephone) (by letter) (by computerized or other electronic means).

"Sexual conduct" means:

[1] Sexual contact with the individual's primary genital area.

[2] Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the genital or anal openings of the child's body or any part of the defendant's body with any object used by the defendant for this purpose. [Emission of semen is not necessary to accomplish this element.]

[3] Performance in any play, dance, or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that depicts any of the following:

[A] An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital

intercourse, whether between human beings or between a human being and an animal.

[B] Sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

[C] Masturbation or lewd exhibitions of the genitals.

[D] Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

Fourth, the defendant acted with the intent that ______ engage in sexual conduct.

Fifth, the defendant's act took place on (or about) ______ in ______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

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[1] While the affirmative defense of mistake as to age is generally not available, in *State v. Moser*, 884 N.W.2d 890, 904 (Minn. App. 2016) the Court of Appeals held "in cases where the defendant has no in-person contact with the child and the child represents to the defendant that he or she is 16 or older, Minnesota Statutes section 609.352, subdivisions 2 and 3(a), violate due process by imposing strict liability and eliminating a mistake-of-age defense."

CRIMJIG 12.76.1

SOLICITATION OF A CHILD TO ENGAGE IN SEXUAL CONDUCT—MISTAKE OF AGE AS A DEFENSE *[New]*

If the defendant had no in-person contact with ________ and the defendant reasonably believed ________ was 16 years of age or older based upon ________'s representations, the defendant is not guilty of the crime of solicitation of a child to engage in sexual conduct. The defendant has the burden of proving the mistake of age defense. If you find that it is more likely true than not true that the defendant had no in-person contact with ________ and the defendant reasonably believed ________ was 16 years of age or older based upon ________'s representations, the defendant is not guilty of the crime of solicitation of a child to engage in sexual conduct. If you do not find that this is more likely true than not true, the defense of mistake of age has not been proven.

COMMENT

M.S.A. § 609.352, subd. 2 and 3(a).

While the affirmative defense of mistake as to age is generally not available, in *State v. Moser*, 884 N.W.2d 890, 904 (Minn. App. 2016) the Court of Appeals held "in cases where the defendant has no in-person contact with the child and the child represents to the defendant that he or she is 16 or older, Minnesota Statutes section 609.352, subdivisions 2 and 3(a), violate due process by imposing strict liability and eliminating a mistake-of-age defense."

CRIMJIG 12.78

SEXUAL PERFORMANCE—USE OF MINORS—ELEMENTS

Add the following Definition and Footnote to the third element of the Jury Instruction:

A person had "reason to know" that the conduct intended was a sexual performance or pornographic work if the person was subjectively aware of a substantial and unjustifiable risk that the conduct intended was a sexual performance or pornographic work.

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[1] *See State v. Mauer*, 741 N.W.2d 107 (Minn. 2007).

CRIMJIG 12.82

SEXUAL PERFORMANCE—USE OF MINORS—DISSEMINATION—ELEMENTS

Replace the current Jury Instruction with the following Text, Footnote, and Comment:

The elements of this crime are:

First, _______ was a minor at the time of the sexual performance. "Minor" means any person under the age of eighteen. It is not necessary that _______ was a minor at the time the work was disseminated.

Second, the defendant disseminated for profit a work depicting a minor in a sexual performance.

"Disseminate" means to distribute, give, sell, lease, or display.

"Work" means an original or reproduction of a picture, film, photograph, negative, slide, video tape, video disc, or drawing.

"Sexual performance" means any play, dance, or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that depicts sexual conduct.

"Sexual conduct" means any of the following:

[1] An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

[2] Sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

[3] Masturbation or lewd exhibitions of the genitals.

[4] Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

"For profit" means that the defendant expected to receive economic gain from the distribution. It is not necessary for the State to prove the defendant actually received a profit or economic gain.

Third, the defendant knew or had reason to know the content and character of the work.

A person had "reason to know" the content and character of the work if the person was subjectively aware of a substantial and unjustifiable risk that that the work was pornographic work involving a minor.[1]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Consent to the sexual performance by the minor or (his) (her) (parent) (guardian) (custodian) is not a defense to this charge.]

[Mistake by the defendant as to the minor's age is not a defense to this charge.]

COMMENT

Minn. Stat. § 617.246, subd. 4.

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[1] *See State v. Mauer*, 741 N.W.2d 107 (Minn. 2007).

CRIMJIG 12.88

INDECENT EXPOSURE—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

[1] First, the defendant willfully and lewdly exposed the defendant's body or private parts.

"Willful" means deliberate, as opposed to accidental.[1]

"Lewd" means openly lustful or indecent.[2]

[2] First, the defendant procured (________) (another person) to expose (________'s) (the other person's) private parts.

[3] First, the defendant engaged in any open or gross lewdness or lascivious behavior or any public indecency.

"Lewd" means openly lustful or indecent.[3]

Second, the defendant's act took place in a public place or any place where others were present.

Third, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

Special Verdict Form on Prior Convictions—Bifurcated Trial

[If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):]

[1] Was the defendant previously convicted of violating this statute or sections 609.342 to 609.3451[, or a statute in conformity with any of those sections]? [You are instructed that ________ is a statute in conformity with section 609.____.][4]

[2] Did the defendant's act take place in the presence of another person while intentionally confining that person or otherwise intentionally restricting that person's freedom to move?[5]

[For each question:] If you find the fact has been proven beyond a reasonable doubt, you should answer "yes." If you find the fact has not been proven beyond a reasonable doubt, you should answer "no."

COMMENT

Minn. Stat. § 617.23.

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[1] *State v. Jama*, 923 N.W.2d 632, 637 (Minn. 2019).

[2] *City of Mankato v. Fetchenhier*, 363 N.W.2d 76, 79 (Minn. Ct. App. 1985).

[3] *Id.*

[4] This special interrogatory should be used only if the defendant is charged with an offense enhanced by prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and the special interrogatory should not be used.

[5] This enhancing factor applies only to violations of Minn. Stat. § 617.23, subd. 1(1). *See* Minn. Stat. § 617.23, subd. 3(2).

CRIMJIG 12.90

INDECENT EXPOSURE IN PRESENCE OF A MINOR UNDER 16—ELEMENTS

Replace current Jury Instruction with the following text, Footnote, and Comments:

The elements of indecent exposure are:

[1] First, the defendant willfully and lewdly exposed the defendant's body or private parts. An act is willful and lewd if it was done with deliberate intent to be lewd or indecent.

[2] First, the defendant procured (________) (another) to expose (his) (her) private parts.

[3] First, the defendant engaged in any open or gross lewdness or lascivious behavior or any public indecency.

Second, the (defendant's) act (of the person defendant procured) took place in a public place or any place where others were present.

Third, the (defendant's) act (of the person defendant procured) took place in the presence of ________, a minor under the age of 16 years. "In the presence of" means that it was committed [in place where (a minor) (________) was reasonably capable of viewing it] [where a reasonable person would have reason to know that a minor might see it]. ["In the presence of" includes an act committed during simultaneous electronic communications with ________.][1]

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 617.23, subd. 2.

In *State v. Stevenson*, 656 N.W.2d 235 (Minn. 2003), the Supreme Court held that the phrase "in the presence of a minor" meant that the conduct must have been reasonably capable of being viewed by a minor. In *Stevenson*, the defendant was seated in his pick-up truck, masturbating, in a public park. The Court also held that an intent to be indecent may be inferred when the defendant's conduct is performed in a place so public and open it is likely to be observed. Note, however, that, as a general rule, instructions involving permissive inferences are not to be given. *See State v. Litzau*, 650 N.W.2d 177 (Minn. 2002) (citing *State v. Olson*, 482 N.W.2d 212 (Minn. 1992)).

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[1] *State v. Decker*, 916 N.W.2d 385 (Minn. 2018).

CRIMJIG 12.100

FAILURE TO REGISTER AS A PREDATORY OFFENDER—CONVICTED OR ADJUDICATED DELINQUENT—ELEMENTS

Replace current Jury Instruction with the following text, Footnotes, and Comments:

The elements of failure to register as a predatory offender are:

[First, defendant is a person required to register as a predatory offender. ["A person required to register as a predatory offender" includes a person who has ((been charged with and convicted of)(attempting to commit)(aiding another to commit) (conspiracy to commit) the offense of ________[1]) (or another offense arising out of the same set of circumstances).]

[First, the defendant is a person required to register as a predatory offender. ["A person required to register as a predatory offender" includes a person who has (been petitioned and adjudicated delinquent for)(attempting to commit)(aiding another to commit) (conspiracy to commit) the offense of ________[2] (or another offense arising out of the same set of circumstances).]

[1] Second, the defendant knowingly violated any of the requirements to register. "To know" requires only that the actor believes that the specified fact exists. The requirements to register include ________.[3]

[2] Second, the defendant intentionally provided false information to (a corrections agent) (a law enforcement authority) (the bureau of criminal apprehension).

Third, the time period during which defendant is required to register has not elapsed.

Fourth, the defendant's (act) (failure to act) took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 243.166.

In *State v. Iverson*, 664 N.W.2d 346 (Minn. 2003), the Supreme Court held that, in the case of a homeless defendant, a factual inquiry into the defendant's living situation is required to determine whether the defendant lives somewhere where mail can be received and can provide five days' notice that the defendant will be going there. If the defendant's "living location" does not fit these criteria, the defendant cannot be found guilty of failure to provide the five days' notice required by Minn. Stat. § 243.166, subd. 3(b). *See* Minn. Stat. § 243.166, subd. 3a for registration requirement when a person lacks a primary address.

The Court of Appeals, in *State v. Wemyss*, 696 N.W.2d 802 (Minn. App. 2005) held that a defendant charged with failing to register as a predatory offender has a right to stipulate to the prior convictions creating a duty for him to register. Evidence tending to show that a defendant has knowledge of his duty to register is admissible if it does not undermine any stipulation to the prior convictions. However, the Court noted that "[a] defendant may not be allowed to unilaterally control the need for relevant evidence by offering to stipulate, especially where the evidence bears upon other issues not covered by the stipulation."

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[1] The offenses listed in Minn. Stat. § 243.166, subd. 1b.

[2] The offenses listed in Minn. Stat. § 243.166, subd. 1b.

[3] *See* Minn. Stat. § 243.166 for requirements. This includes not only the content requirements under subdivisions 4, 4a, and 4b but also the registration procedures under subdivisions 3 and 3a, and the time requirement under subdivisions 1 and 6.

CRIMJIG 12.102

FAILURE TO REGISTER AS A PREDATORY OFFENDER—COMMITTED PURSUANT TO COURT ORDER—ELEMENTS

Replace the current instruction with the following text:

The elements of failure to register as a predatory offender are

First, defendant is a person required to register as a predatory offender. ["A person is required to register as a predatory offender" includes a person who has been committed pursuant to a court commitment order [pursuant to Minnesota Statutes 253B.185] [as a person with a sexual psychopathic personality] [as a sexually dangerous person] [under a law of another state or the United States similar to Minnesota law]].

[1] Second, the defendant knowingly violated any of the requirements to register. The requirements to register include ________.[1]

[2] Second, the defendant intentionally provided false information to (a corrections agent) (a law enforcement authority) (the bureau of criminal apprehension).

Third, the time period during which defendant is required to register has not elapsed.

Fourth, the defendant's (act) (failure to act) took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty you will have an additional question to consider. The question is: At the time of the offense, was the defendant assigned Risk Level III?

You will answer the question "yes" or "no." If you have a reasonable doubt, you will answer the question "no."

COMMENT

M.S.A. § 243.166, subd. 1(c).

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[1] *See* M.S.A. § 243.166 for requirements. This includes not only the content requirements under subdivisions 4 and 4a, but also the registration procedures under subdivision 3 and the time requirement under subdivisions 1 and 6.

CRIMJIG 12.105

DISSEMINATION OF PORNOGRAPHIC WORK INVOLVING MINORS——ELEMENTS

Replace the current Jury Instruction with the following Text, Footnote, and Comment:

The elements of this crime are:

First, defendant knowingly disseminated a pornographic work (to an adult or minor).

Second, the pornographic work involved the use of a minor. "Minor" means any person under the age of 18 at the time the work was (created) (or) (altered).

Third, the defendant knew or had reason to know that the content and character of the work was pornographic work involving the use of a minor.

A person had "reason to know" that that the content and character of the work was pornographic work involving the use of a minor if the person was subjectively aware of a substantial and unjustifiable risk that that the content and character of the work was pornographic work involving the use of a minor.[1]

"Pornographic work" means:

[1] an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing of a sexual performance involving a minor;

[2] any visual depiction, including any photograph, film, video, picture, drawing, negative, slide, or computer-generated image or picture, whether made or produced by electronic, mechanical or other means that:

(i) uses a minor to depict actual or simulated sexual conduct;

(ii) has been created, adapted, or modified

to appear that an identifiable minor is engaging in sexual conduct (An identifiable minor is a person who was a minor at the time the depiction was created or altered, whose image is used to create the visual depiction.);

(iii) is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexual conduct.

"Sexual performance" means any play, dance, or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that depicts sexual conduct.

"Sexual conduct" means any of the following:

[1] An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

[2] Sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

[3] Masturbation;

[4] Lewd exhibitions of the genitals.

[5] Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

[Consent to the sexual performance by the minor or the minor's (parent) (guardian) (custodian) is not a defense to this charge.]

[Mistake by the defendant as to the minor's age is not a defense to this charge.]

[Fourth, the defendant disseminated the work for profit.]

[Fourth] [Fifth], the defendant's acts took place on or about ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. §§ 617.246, subd. 4 [for profit], 617.247, subd. 3.

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[1] *See State v. Mauer*, 741 N.W.2d 107 (Minn. 2007).

CRIMJIG 12.106

POSSESSION OF PORNOGRAPHIC WORK INVOLVING MINORS—DEFINED

COMMENT

Add the following text as the second paragraph to the Comment:

Although a defendant may be charged for possession of a computer disk on which child pornography appears as a single count, it is worth noting that each individual image depicting child pornography may be a separate pornographic work under M.S.A. § 617.247, subd. 4(a). In *State v. Bakken*, 883 N.W.2d 264, (Minn. 2016) the Supreme Court held that M.S.A. § 617.247 authorized the State to charge defendant with a separate criminal count for each distinct "pornographic work" involving minors that defendant possessed, even though those works were stored on a single computer.

CRIMJIG 12.107

POSSESSION OF PORNOGRAPHIC WORK INVOLVING MINORS——ELEMENTS

Replace the current Jury Instruction with the following Text, Footnote, and Comment:

The elements of this crime are:

First, defendant possessed a (pornographic work) (or) (a computer disk or computer or other electronic, magnetic or optical storage system or a storage system of any other type containing a pornographic work).

Second, the defendant knew or had reason to know that the content and character of the work was pornographic work involving minors.

"To know" requires only that the actor believes that the specified fact exists.

A person had "reason to know" that that the content and character of the work was pornographic work involving minors if the person was subjectively aware of a substantial and unjustifiable risk that that the content and character of the work was pornographic work involving minors.[1]

"Minor" means any person under the age of 18 at the time the pornographic work was (created) (or) (altered).

"Pornographic work" means:

[1] an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing of a sexual performance involving a minor;

[2] any visual depiction, including any photograph, film, video, picture, drawing, negative, slide, or computer-generated image or picture, whether made or produced by electronic, mechanical or other means that:

(i) uses a minor to depict actual or simulated sexual conduct;

(ii) has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct (An identifiable minor is a person who was a minor at the time the depiction was created or altered, whose image is used to create the visual depiction.);

(iii) is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexual conduct.

"Sexual performance" means any play, dance, or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that depicts sexual conduct.

"Sexual conduct" means any of the following:

[1] An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

[2] Sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

[3] Masturbation;

[4] Lewd exhibitions of the genitals.

[5] Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female,

whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

[Consent to the sexual performance by the minor or (parent) (guardian) (custodian) is not a defense to this charge.]

Third, the defendant's acts took place on or about ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 617.247, subd. 4.

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[1] *See State v. Mauer*, 741 N.W.2d 107 (Minn. 2007).

CRIMJIG 12.112

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—CORRECTIONAL FACILITY EMPLOYEE MISCONDUCT—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system and intentionally engages in sexual penetration with

[1] a resident of a facility

[2] a person under supervision of the correctional system

is guilty of a crime.

COMMENT

Minn. Stat. § 609.344, subd. 1(m).

CRIMJIG 12.113

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—CORRECTIONAL FACILITY EMPLOYEE MISCONDUCT—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant intentionally sexually penetrated ________.

[1] Sexual intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis into the female genital opening.

[2] Fellatio constitutes sexual penetration if there is any contact between the penis of one person and the mouth, tongue or lips of another person.

[3] Cunnilingus constitutes sexual penetration if there is any contact between the female genital opening of one person and the mouth, tongue, or lips of another person.

[4] Anal intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis of one person into the anal opening of another person.

[5] Any intrusion however slight, into the genital or anal openings of ________'s body by (any part of the defendant's body) or (any object used by the defendant for this purpose).

[6] Any intrusion however slight into the genital or anal openings of ________'s body by any part of ________'s body by any part of the body of another person or by any object used by ________ or by another person for this purpose and the

intrusion was effected by the defendant and the defendant was in a current or recent position of authority[1] or used coercion[2] (or by inducement if was mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.][3] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact.]

[7] Any intrusion however slight by any part of the body of the defendant or another person by any part of the body of ________ or by any object used by ________ for this purpose, and the intrusion was effected by the defendant and the defendant was in a current or recent position of authority or used coercion (or by inducement if ________ was mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks

the judgment to give a reasoned consent to sexual contact.]

[Emission of semen is not necessary to accomplish sexual penetration.]

Second, at the time of the sexual penetration, the defendant was a [employee] [independent contractor] [volunteer] of a [state] [county] [city] [privately operated] [adult] [juvenile] correctional system.

Third, at the time of the sexual penetration, ________ (the complainant) was [a resident of a facility] [under the supervision] of the correctional system. Consent is not a defense to this charge.

Fourth, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.344, subd. 1(m).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] *See* CRIMJIG 12.01 for definitions of "force" and "coercion."

[3] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 12.114

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—CORRECTIONAL FACILITY EMPLOYEE MISCONDUCT—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system and intentionally engages in sexual contact with

[1] a resident of a facility

[2] a person under supervision of the correctional system

is guilty of a crime.

COMMENT

Minn. Stat. § 609.345, subd. 1(m).

CRIMJIG 12.115

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—CORRECTIONAL FACILITY EMPLOYEE MISCONDUCT—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

[1] **First**, the defendant intentionally touched ________'s intimate parts or the clothing covering the immediate area of ________'s intimate parts. [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.]

[2] **First**, the defendant intentionally effected the touching by the complainant of the defendant's, ________'s, or another's intimate parts or the clothing covering the immediate area of the intimate parts and the defendant was in a current or recent position of authority[1] or used coercion[2] (or by inducement and is under 13 years of age or mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.][3] [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact.]

[3] **First**, defendant intentionally effected the touching of ________'s intimate parts or the clothing covering the immediate area of ________'s intimate parts by another and the defendant was in a current or recent position of authority or used coercion[2] to accomplish the act. [A person in a "current

or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.] [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.]

Second, at the time of the sexual contact, the defendant was a [employee] [independent contractor] [volunteer] of a [state] [county] [city] [privately operated] [adult] [juvenile] correctional system.

Third, at the time of the sexual contact, ________ (the complainant) was [a resident of a facility] [under the supervision] of the correctional system.

Consent is not a defense to this charge.

Fourth, the defendant acted with sexual or aggressive intent.

Fifth, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.345, subd. 1(m).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] *See* CRIMJIG 12.01 for definitions of "force" and "coercion."

[3] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 12.116

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—SPECIAL TRANSPORTATION EMPLOYEE MISCONDUCT—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever provides or is an agent of someone who provides special transportation service and intentionally engages in sexual penetration with a person who uses the special transportation service is guilty of a crime.

COMMENT

Minn. Stat. § 609.344, subd. 1(n).

CRIMJIG 12.117

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—SPECIAL TRANSPORTATION EMPLOYEE MISCONDUCT—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant intentionally sexually penetrated ________.

[1] **Sexual intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis into the female genital opening.**

[2] **Fellatio constitutes sexual penetration if there is any contact between the penis of one person and the mouth, tongue or lips of another person.**

[3] **Cunnilingus constitutes sexual penetration if there is any contact between the female genital opening of one person and the mouth, tongue, or lips of another person.**

[4] **Anal intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis of one person into the anal opening of another person.**

[5] **Any intrusion however slight, into the genital or anal openings of ________'s body by (any part of the defendant's body) or (any object used by the defendant for this purpose).**

[6] **Any intrusion however slight into the genital or anal openings of ________'s body by any part of ________'s body by any part of the body of another person or by any object used by ________ or by another person for this purpose and the**

intrusion was effected by the defendant and the defendant was in a current or recent position of authority[1] or used coercion[2] (or by inducement if was mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.][3] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact.]

[7] Any intrusion however slight by any part of the body of the defendant or another person by any part of the body of ________ or by any object used by ________ for this purpose, and the intrusion was effected by the defendant and the defendant was in a current or recent position of authority or used coercion1 (or by inducement if ________ was mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks

the judgment to give a reasoned consent to sexual contact.]

[Emission of semen is not necessary to accomplish sexual penetration.]

Second, at the time of the sexual penetration, the defendant was a provider or an agent of someone who provides special transportation service.

Third, at the time of the sexual penetration, ________ (the complainant) was person who used the special transportation service. Consent of ________ (the complainant) is not a defense to this charge.

Fourth, the sexual penetration occurred during or immediately before or after the defendant transported the complainant.

Fifth, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.344, subd. 1(n).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] *See* CRIMJIG 12.01 for definitions of "force" and "coercion."

[3] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 12.118

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—SPECIAL TRANSPORTATION EMPLOYEE MISCONDUCT—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever provides or is an agent of someone who provides special transportation service and intentionally engages in sexual contact with a person who used the special transportation service is guilty of a crime.

COMMENT

Minn. Stat. § 609.345, subd. 1(n).

CRIMJIG 12.119

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—SPECIAL TRANSPORTATION EMPLOYEE MISCONDUCT—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

[1] First, the defendant intentionally touched ________'s intimate parts or the clothing covering the immediate area of ________'s intimate parts. [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.]

[2] First, the defendant intentionally effected the touching by the complainant of the defendant's, ________'s, or another's intimate parts or the clothing covering the immediate area of the intimate parts and the defendant was in a current or recent position of authority[1] or used coercion[2](or by inducement and is under 13 years of age or mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.][3] [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact.]

[3] First, defendant intentionally effected the touching of ________'s intimate parts or the clothing covering the immediate area of ________'s intimate parts by another and the defendant was in a current or recent position of authority or used coercion[1] to accomplish the act. [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.] [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.]

Second, at the time of the sexual contact, the defendant [provided special transportation service] [was an agent of special transportation service].

Third, ________ (the complainant) used the special transportation service. Consent of ________ (the complainant) is not a defense to this charge.

Fourth, the sexual contact occurred during or immediately before or after the defendant transported ________ (the complainant).

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.345, subd. 1(n).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] *See* CRIMJIG 12.01 for definitions of "force" and "coercion."

[3] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 12.120

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—MASSAGE OR OTHER BODYWORK—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever performs massage or other bodywork for hire and intentionally engages in non-consensual sexual penetration with a person who was a user of those services is guilty of a crime.

COMMENT

Minn. Stat. § 609.344, subd. 1(o).

CRIMJIG 12.121

CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE—MASSAGE OR OTHER BODYWORK—ELEMENTS

Replace the current Jury Instruction with the following text and Comments:

The elements of this crime are:

First, the defendant intentionally sexually penetrated ________.

[1] Sexual intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis into the female genital opening.

[2] Fellatio constitutes sexual penetration if there is any contact between the penis of one person and the mouth, tongue or lips of another person.

[3] Cunnilingus constitutes sexual penetration if there is any contact between the female genital opening of one person and the mouth, tongue, or lips of another person.

[4] Anal intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis of one person into the anal opening of another person.

[5] Any intrusion however slight, into the genital or anal openings of ________'s body by (any part of the defendant's body) or (any object used by the defendant for this purpose).

[6] Any intrusion however slight into the genital or anal openings of ________'s body by any part of ________'s body by any part of the body of another person or by any object used by or by another person for this purpose and the intrusion

was effected by the defendant and the defendant was in a current or recent position of authority[1] or used coercion[2] (or by inducement if was mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.][3] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact.]

[7] Any intrusion however slight by any part of the body of the defendant or another person by any part of the body of ________ or by any object used by ________ for this purpose, and the intrusion was effected by the defendant and the defendant was in a current or recent position of authority or used coercion[4] (or by inducement if ________ was mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact.]

[Emission of semen is not necessary to accomplish sexual penetration.]

Second, at the time of the sexual penetration, the defendant was performing a massage or other bodywork.

Third, the defendant was performing for hire.

Fourth, at the time of the sexual penetration, ________ (the complainant) was a person who used those services.

Fifth, the sexual penetration occurred during or immediately before or after the defendant performed the massage or other bodywork.

Sixth, ________ (the complainant) did not consent to sexual penetration.

Seventh, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.344, subd. 1(o).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] *See* CRIMJIG 12.01 for definitions of "force" and "coercion."

[3] Minn. Stat. § 609.341, subd. 10.

[4] *See* CRIMJIG 12.01 for definitions of "force" and "coercion."

CRIMJIG 12.122

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—MASSAGE OR OTHER BODYWORK—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever provides performs massage or other bodywork and intentionally engages in sexual contact with a person who was a user of those services is guilty of a crime.

COMMENT

Minn. Stat. § 609.345, subd. 1(o).

CRIMJIG 12.123

CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE—MASSAGE OR OTHER BODYWORK—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

[1] First, the defendant intentionally touched ________'s intimate parts or the clothing covering the immediate area of ________'s intimate parts. [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.]

[2] First, the defendant intentionally effected the touching by the complainant of the defendant's, ________'s, or another's intimate parts or the clothing covering the immediate area of the intimate parts and the defendant was in a current or recent position of authority[1] or used coercion[2] (or by inducement and is under 13 years of age or mentally impaired). [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.][3] [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.] ["Mentally impaired" means that a person as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact.]

[3] First, defendant intentionally effected the touching of ________'s intimate parts or the clothing covering the immediate area of ________'s intimate parts by another and the defendant was in a current or recent position of authority or used coercion[4] to accomplish the act. [A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.] [The "intimate parts" of the body include the genital area, groin, inner thigh, buttocks, and breast.]

Second, at the time of the sexual contact, the defendant was performing a massage or other bodywork.

Third, the defendant was performing for hire.

Fourth, at the time of the sexual contact, ________ (the complainant) was a person who used those services.

Fifth, the sexual contact occurred during or immediately before or after the defendant performed the massage or other bodywork.

Sixth, ________ (the complainant) did not consent to the sexual contact.

Seventh, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.345, subd. 1(o).

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[1] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[2] *See* CRIMJIG 12.01 for definitions of "force" and "coercion."

[3] Minn. Stat. § 609.341, subd. 10.

[4] *See* CRIMJIG 12.01 for definitions of "force" and "coercion."

CHAPTER 13

ASSAULT AND RELATED CRIMES AGAINST THE PERSON

CRIMJIG 13.01

ASSAULT—INTENT TO CAUSE FEAR

COMMENT

Add the following text as the third paragraph to the Comment:

In *State v. Dorn*, the Supreme Court held that the mens rea required for assault-harm, M.S.A. § 609.02, subd. 10(2), is the general intent to commit an act that constitutes a battery. 887 N.W.2d 826 (Minn. 2016); *see also State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). The court noted that "a general-intent crime only requires proof that 'the defendant intended to do the physical act forbidden, without proof that [she] meant to or knew that [she] would violate the law or cause a particular result.' " *Dorn*, 887 N.W.2d at 830 (quoting *Fleck,* 810 N.W.2d at 308). On the other hand, for a specific-intent crime (*e.g.*, assault with the intent to cause fear), the State must show that the defendant "meant to or knew that [she] would violate the law or cause a specific result." *Id.*

CRIMJIG 13.02

ASSAULT—INFLICTION OF BODILY HARM

COMMENT

Add the following text as the third paragraph to the Comment:

In *State v. Dorn*, the Supreme Court held that the mens rea required for assault-harm, M.S.A. § 609.02, subd. 10(2), is the general intent to commit an act that constitutes a battery. 887 N.W.2d 826 (Minn. 2016); *see also State v. Fleck*, 810 N.W. 303 (Minn. 2012). The court noted that "a general-intent crime only requires proof that 'the defendant intended to do the physical act forbidden, without proof that [she] meant to or knew that [she] would violate the law or cause a particular result.' " *Dorn*, 887 N.W.2d at 830 (quoting *Fleck,* 810 N.W.2d at 308). On the other hand, for a specific-intent crime (*e.g.*, assault with the intent to cause fear), the State must show that the defendant "meant to or knew that [she] would violate the law or cause a specific result." *Id.*

CRIMJIG 13.04

ASSAULT IN THE FIRST DEGREE (ASSAULT WITH GREAT BODILY HARM)—ELEMENTS

COMMENT

Add the following text at the end of the second paragraph of the Comment:

In *State v. Dye*, 871 N.W.2d 916 (Minn. App. 2015) the Court of Appeals held that whether an gunshot wound creates a “high probability of death” is determined at the time it is known what path the bullet took and what parts of the body were hit. The fact that the bullet passed close to critical body parts did not make the injury life-threatening. In contrast, *see State v. Dorn*, 875 N.W.2d 357 (Minn. App. 2016) in which the defendant’s “slight push” resulted in victim falling into a bonfire and suffering third degree burns. The Court of Appeals upheld the conviction of defendant on first-degree assault as the volitional act, performed in a hostile manner, was the substantial cause of the bodily harm.

Replace the fourth paragraph of the Comment with the following text:

While *State v. Bridgeforth*, 357 N.W.2d 393 (Minn. App. 1984) held that loss of a tooth satisfied the definition of great bodily harm, because it constituted permanent loss of a bodily member, the question of whether a particular injury constitutes great bodily harm is a question for the jury. *State v. Moore*, 699 N.W.2d 733 (Minn. 2005).

CRIMJIG 13.10

ASSAULT IN THE SECOND DEGREE—DANGEROUS WEAPON—ELEMENTS

Replace the second Element with the following text:

Second, the defendant, in assaulting ________, used a dangerous weapon. (A firearm, whether loaded or unloaded, or even temporarily inoperable, is a dangerous weapon.) (A "dangerous weapon" is any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or any other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.)

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[2] A flammable liquid is defined by statute to be: Class I flammable liquids as defined in section 9.108 of the Uniform Fire Code, but not intoxicating liquor as defined in M.S.A. § 340.07. M.S.A. § 609.01, subd. 6.

CRIMJIG 13.12

ASSAULT IN THE SECOND DEGREE—DANGEROUS WEAPON—SUBSTANTIAL BODILY HARM—ELEMENTS

Replace the second Element with the following text:

Second, the defendant, in assaulting ———, used a dangerous weapon. (A firearm, whether loaded or unloaded, or even temporarily inoperable, is a dangerous weapon.) (A "dangerous weapon" is any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or any other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.

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[2] A flammable liquid is defined by statute to be: Class I flammable liquids as defined in section 9.108 of the Uniform Fire Code, but not intoxicating liquor as defined in M.S.A. § 340.07. M.S.A. § 609.01, subd. 6.

CRIMJIG 13.21

ASSAULT IN THE FOURTH DEGREE—ON A PEACE OFFICER—DEFINED

Replace the current Jury Instruction with the following text and Comments:

Under Minnesota law, whoever

[1] physically assaults a licensed peace officer

[2] physically assaults a licensed peace officer and inflicts demonstrable bodily harm

[3] intentionally throws or otherwise transfers bodily fluids or feces at or onto the licensed officer

when the officer is effecting a lawful arrest or executing any other duty imposed by law is guilty of a crime.

COMMENT

Minn. Stat. § 609.2231, subd. 1(b) and 1(c).

Option [1] is for use under Minn. Stat. § 609.2231, subd. 1(b), gross misdemeanor assault in the Fourth Degree. Options [2] and [3] are alternatives under Minn. Stat. § 609.2231, subd. 1(c), felony assault in the Fourth Degree.

Minnesota law does not authorize a person to use force to resist an allegedly illegal search or seizure by peace officers. *State v. Kutchara*, 350 N.W.2d 924 (Minn. 1984).

CRIMJIG 13.22

ASSAULT IN THE FOURTH DEGREE—ON A PEACE OFFICER—ELEMENTS

Replace the current Jury Instruction with the following text and Comments. Delete the Footnote:

The elements of assault in the fourth degree on a peace officer are:

[1] First, the defendant physically assaulted ________. [Insert CRIMJIG 13.02 for assault—infliction of bodily harm.]

[2] First, the defendant physically assaulted ________. [Insert CRIMJIG 13.02 for assault—infliction of bodily harm.]

Second, the defendant inflicted demonstrable bodily harm on ________. "Demonstrable bodily harm" means bodily harm that is capable of being perceived by a person other than the victim.

[3] First, the defendant intentionally threw or otherwise transferred bodily fluids or feces at or onto ________. "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word "intentionally." [To "have knowledge" requires only that the actor believes that the specified facts exist.]

[Second] [Third], ________ was a licensed Minnesota peace officer.

[Third] [Fourth], ________ was effecting a lawful arrest or executing any other duty imposed by law.

[Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2231, subd. 1(b) and 1(c).

Option [1] is for use under Minn. Stat. § 609.2231, subd. 1(b), gross misdemeanor assault in the Fourth Degree. Options [2] and [3] are alternatives under Minn. Stat. § 609.2231, subd. 1(c), felony assault in the Fourth Degree.

The definition of demonstrable bodily harm comes from *State v. Backus*, 358 N.W.2d 93 (Minn. App. 1984).

The committee notes that the term "physical assault" is not statutorily defined.

A peace officer working as a privately employed security officer, who has probable cause to arrest an individual, is executing a duty imposed by law under Minn. Stat. § 609.2231, subd. 1 and is acting in his capacity as a peace officer. *State v. Ivy*, 873 N.W.2d 362 (Minn. App. 2015).

CRIMJIG 13.47

DOMESTIC ASSAULT—INTENT TO CAUSE FEAR—ELEMENTS

Replace current Jury Instruction with the following text, Footnotes, and Comment:

The elements of domestic assault are:

First, the defendant committed an act done with intent to cause ________ (the victim) to fear immediate bodily harm or death.

The term "assault" as used in this (case) (charge) means an act done with intent to cause ________ (the victim) to fear immediate bodily harm or death.

"Bodily harm" means physical pain or injury, illness, or any impairment of a person's physical condition. It is not necessary for the State to prove that the defendant intended to inflict bodily harm or death, but only that the defendant acted with intent that ________ would fear that the defendant would so act. [In order for an assault to have been committed, it is not necessary that there have been any physical contact with the body of the person assaulted.[1]]

"With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified, believes that the act, if successful, will cause that result.

Second, ________ was a member of the defendant's family or household. The statutes define a family or household member as including ________.[2]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty.

If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2242, subd. 1(1).

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[1] *See State v. Ott*, 291 Minn. 72, 189 N.W.2d 377 (1971). This instruction should be given with the definitions of assault in the second degree and assault in the fifth degree.

[2] *See* Minn. Stat. § 518B.01, subd. 2(b), for definition of a family or household member.

CRIMJIG 13.48

DOMESTIC ASSAULT—INTENT TO INFLICT BODILY HARM—ELEMENTS

Replace current Jury Instruction with the following text, Footnotes, and Comment:

The elements of domestic assault are:

First, the defendant intentionally inflicted or attempted to inflict bodily harm on ________.

"Bodily harm" means physical pain or injury, illness, or any impairment of a person's physical condition. [In order for an assault to have been committed, it is not necessary that there have been any physical contact with the body of the person assaulted.[1]]

"Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word "intentionally." [To "have knowledge" requires only that the actor believes that the specified facts exist.]

["Attempted" means that the actor did an act which was a substantial step toward, and more than mere preparation for, causing the result, and that the actor did that act with intent to cause that result. "With intent to" means that the actor either had a purpose to do the thing or cause the result specified, or believed that the act, if successful, will cause that result. [Here insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]]

Second, ________ was a member of the defendant's family or household. The statutes define a family or household member as including ________.[2]

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2242, subd. 1(2).

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[1] *See State v. Ott*, 291 Minn. 72, 189 N.W.2d 377 (1971). This instruction should be given with the definitions of assault in the second degree and assault in the fifth degree.

[2] *See* Minn. Stat. § 518B.01, subd. 2(b) for definition of family or household member.

CRIMJIG 13.49

DOMESTIC ASSAULT—PRIOR CONVICTION WITHIN TEN YEARS—FELONY—INTENT TO CAUSE FEAR OR INFLICT BODILY HARM—DEFINED

COMMENT

Replace the second paragraph to the Comments with the following:

If the defendant stipulates to a prior conviction, the court should accept the stipulation. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984); *State v. Allen*, 375 N.W.2d 82 (Minn. App. 1985); *State v. Clark*, 375 N.W.2d 59 (Minn. App. 1985). In such cases, the Committee recommends use of the appropriate provisions of CRIMJIGs 13.46 to 13.48, even though a guilty verdict would be for a gross misdemeanor offense.

CRIMJIG 13.52

DOMESTIC ASSAULT—PRIOR CONVICTION OR ADJUDICATION WITHIN TEN YEARS—GROSS MISDEMEANOR—INTENT TO CAUSE FEAR OR INFLICT BODILY HARM—DEFINED

COMMENT

Replace the second paragraph to the Comments with the following:

If the defendant stipulates to a prior conviction, the court should accept the stipulation. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984); *State v. Allen*, 375 N.W.2d 82 (Minn. App. 1985); *State v. Clark*, 375 N.W.2d 59 (Minn. App. 1985). In such cases, the Committee recommends use of the appropriate provisions of CRIMJIGs 13.46 to 13.48, even though a guilty verdict would be for a gross misdemeanor offense.

CRIMJIG 13.57

HARASSMENT—DEFINED (OLD)

NOTE: In 2020, the Minnesota Legislature enacted a number of changes to Minn. Stat. § 609.749 effective August 1, 2020. In response, the Committee has drafted a new instruction for crimes committed on or after August 1, 2020. Be sure to use the proper instruction based upon the date the crime was committed.

Use the following instruction for Harassment crimes committed before August 1, 2020.

Under Minnesota law, whoever harasses another person by

[1] directly or indirectly, or through third parties, manifesting a purpose or intent to injure the person, property, or rights by the commission of an unlawful act,

[2] following, monitoring, or pursuing the other person, whether in person or through any available technological or other means,

[3] returning to the property of the other person if the defendant is without claim of right to the property or consent of one with authority to consent,

[4] [Note: At the time of this update, the Minnesota Court of Appeals held this subdivision, relating to repeated telephone calls or text messages, unconstitutional under the First Amendment in *State v. Peterson*, 936 N.W.2d. 912 (Minn. Ct. App. 2019).*]*

[5] making or causing the telephone of the other person to ring repeatedly or continuously,

[6] knowingly making false allegations against a peace officer concerning the officer's performance of

official duties with intent to influence or tamper with the officer's performance of official duties,

[7] using the other person's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the other person,

knowing or having reason to know the conduct would cause the other person under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the other person, is guilty of a crime.

COMMENT

Minn. Stat. § 609.749, subd. 2.

Effective July 1, 2019, the term "stalking" has been replaced by "harass" or "harassment" in Minn. Stat. § 609.749, except for subd. 5, which was formerly called "pattern of stalking conduct" and is now "stalking."

CRIMJIG 13.57.1

HARASSMENT—DEFINED (NEW)

NOTE: In 2020, the Minnesota Legislature enacted a number of changes to Minn. Stat. § 609.749 effective August 1, 2020. In response, the Committee has drafted a new instruction for crimes committed on or after August 1, 2020. Be sure to use the proper instruction based upon the date the crime was committed.

Use the following instruction for Harassment crimes committed on or after August 1, 2020.

Under Minnesota law, whoever, with the intent to kill, injure, harass, or intimidate another person,

[1] directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another person by the commission of an unlawful act,

[2] follows, monitors, or pursues another person, whether in person or through any available technological or other means,

[3] returns to the property of another person if the defendant is without claim of right to the property or consent of one with authority to consent,

[4] repeatedly makes telephone calls or sends text messages to another person, or induces the other person to make telephone calls to the defendant, whether or not conversation ensues,

[5] makes or causes the telephone of another person to ring repeatedly or continuously,

[6] repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing

loss, or any communication made through any available technologies or other objects,

[7] knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties,

[8] uses another person's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person,

and thereby places the other person in reasonable fear of substantial bodily harm, or places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm, or causes or would reasonably be expected to cause substantial emotional distress to the other person, is guilty of a crime.

COMMENT

Minn. Stat. § 609.749, subd. 2.

CRIMJIG 13.58

HARASSMENT—ELEMENTS (OLD)

NOTE: In 2020, the Minnesota Legislature enacted a number of changes to Minn. Stat. § 609.749 effective August 1, 2020. In response, the Committee has drafted a new instruction for crimes committed on or after August 1, 2020. Be sure to use the proper instruction based upon the date the crime was committed.

Use the following instruction for Harassment crimes committed before August 1, 2020.

The elements of this crime are:

[1] **First**, the defendant, directly or indirectly, or through third parties, manifested a purpose or intent to injure the person, property, or rights of another person by the commission of the unlawful act of ——.[1]

[INSERT elements of the unlawful act without date or venue.]

[2] **First**, the defendant followed, monitored or pursued another person, whether in person or through any available technological or other means.

[3] **First**, the defendant returned to the property of another person without claim of right to the property or consent of one with authority to consent.

[4] **[Note: At the time of this update, the Minnesota Court of Appeals held this subdivision, relating to repeated telephone calls or text messages, unconstitutional under the First Amendment in *State v. Peterson*, 936 N.W.2d. 912 (Minn. Ct. App. 2019).*]***

[5] **First**, the defendant made or caused the telephone of another person repeatedly or continuously to ring.

[6] **First**, the defendant knowingly made false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

> **"With intent to" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.[2]**

[7] First, the defendant used another person's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the other person.

> **"Personal information" means any identifier that permits communication or in-person contact with a person, including: (1) a person's first and last name, first initial and last name, first name and last initial, or nickname; (2) a person's home, school, or work address; (3) a person's telephone number, e-mail address, or social media account information; or (4) a person's geolocation data.[3]**

> **"Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content.[4]**

> **"Sexual act" means either sexual contact or sexual penetration.[5] "Sexual contact" means the intentional touching of intimate parts or intentional touching with seminal fluid or sperm onto another person's body.[6] "Intimate parts" means the genitals, pubic area, or anus of a person, or if the person is female, a partially or fully exposed nipple.[7] "Sexual penetration" means any of the following acts: (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or (2) any intrusion, however slight, into the genital or anal openings of a person by another person's body part or an object used by another person for this purpose.[8]**

Second, the defendant knew or had reason to know that the conduct would cause (the alleged victim) (________) under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated. The state is not required to prove that the defendant intended to cause such a reaction by (the alleged victim) (________).

"To know" requires only that the actor believes that the specified fact exists.[9]

"To have reason to know" requires only that the actor is subjectively aware of a substantial and unjustifiable risk that the actor's conduct would cause (the alleged victim) (________) under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated.[10]

Third, (the alleged victim) (________) felt frightened, threatened, oppressed, persecuted, or intimidated as a result of the defendant's conduct.

[1] **Fourth**, the defendant's act(s) took place on (or about) ____, in ________ County.

[2] **Fourth**, the defendant's act(s) took place on (or about) ________, and at least one of the defendant's acts took place in ________ County.[11]

[3] **Fourth**, the defendant's act(s) took place on (or about) ________, and (a call was (made) (received)) ((the defendant) (the alleged victim) (________) resided) ((the alleged victim's) (________'s) designated address [in a confidentiality program] was) in ________ County.[12]

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):]

[1] Did the defendant commit the act(s) because of (the alleged victim's) (________'s) (or) (another person's) actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin?

> "Disability" means any condition or characteristic that renders a person a disabled person. A "disabled person" is any person who (1) has a physical, sensory, or mental impairment that materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.[13]

[2] Did the defendant commit the offense by falsely impersonating another person?

[3] Did the defendant possess a dangerous weapon at the time of the offense?

> "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.[14]

> "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.[15]

[4] Did the defendant harass another person [with intent to influence or otherwise tamper with (a juror) (judicial proceeding)] [or] [with intent to retaliate against a (judge) (court commissioner) (referee) (person appointed by a judge or court to hear or determine a cause or controversy) (prosecutor) (defense attorney) (officer of the court) because of that person's performance of official duties in connection with a judicial proceeding]?

"With intent to" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act, if successful, will cause that result.[16]

[5] Was (the alleged victim) (________) under the age of 18?

Was the defendant more than 36 months older than (the alleged victim) (________)?

[6] Was (the alleged victim) (________) under the age of 18?

Was the defendant more than 36 months older than (the alleged victim) (________)?

Was the defendant's act committed with sexual or aggressive intent?

[7] Did the defendant's act take place within ten years of a previous qualified domestic violence-related offense (conviction) (adjudication of delinquency)? You are instructed that ________[17] is a qualified domestic violence-related offense.[18]

[8] Did the defendant's act take place within ten years of the first of any combination of two or more previous qualified domestic violence-related offense (convictions) (adjudications of delinquency)? You are instructed that ________[19] [and ________] (is) (are) (a) qualified domestic violence-related offense(s).[20]

[For each question:] If you find the fact has been proven beyond a reasonable doubt, you should answer "yes." If you find the fact has not been proven beyond a reasonable doubt, you should answer "no."

COMMENT

Minn. Stat. § 609.749, subds. 1, 1a, 1b, 2, 3, 4.

Effective July 1, 2019, the term "stalking" has been replaced by "harass" or "harassment" in Minn. Stat. § 609.749, except for subd. 5, which was formerly called "pattern of stalking conduct" and is now "stalking."

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[1] To convict of harassment under Minn. Stat. § 609.749, subd. 2(1), the state must prove that the defendant committed an unlawful act independent of Minn. Stat. § 609.749, subd. 1. *See State v. Pegelow*, 809 N.W.2d 245, 248 (Minn. Ct. App. 2012).

[2] Minn. Stat. § 609.02, subd. 9(4).

[3] Minn. Stat. § 617.261, subd. 7(f).

[4] Minn. Stat. § 617.261, subd. 7(j).

[5] Minn. Stat. § 617.261, subd. 7(g).

[6] Minn. Stat. § 617.261, subd. 7(h).

[7] Minn. Stat. § 617.261, subd. 7(e).

[8] Minn. Stat. § 617.261, subd. 7(i).

[9] Minn. Stat. § 609.02, subd. 9(2).

[10] This definition should be used for any crimes charged that may implicate the defendant's First Amendment rights. *See State v. Mauer*, 741 N.W.2d 107, 115 (Minn. 2007).

[11] *See* Minn. Stat. § 609.749, subd. 1b(a).

[12] *See* Minn. Stat. § 609.749, subd. 1b(b), for multiple venue provisions corresponding to different subsections of the statute.

[13] Minn. Stat. § 363A.03, subd. 12.

[14] Minn. Stat. § 609.02, subd. 6.

[15] Minn. Stat. § 609.02, subd. 8.

[16] Minn. Stat. § 609.02, subd. 9(4).

[17] *See* Minn. Stat. § 609.02, subd. 16, for the list of qualified domestic violence-related offenses.

[18] This special interrogatory should be used only if the defendant is charged with an offense enhanced by a prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally by the defendant on the record. If the defendant stipulated to a previous qualified domestic violence-related offense, that information should not be presented to the jury, and this special interrogatory should not be used.

[19] *See* Minn. Stat. § 609.02, subd. 16, for the list of qualified domestic violence-related offenses.

[20] This special interrogatory should be used only if the defendant is charged with an offense enhanced by a prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally by the defendant on the record. If the defendant stipulated to one or more previous qualified domestic violence-related offenses, that information should not be presented to the jury, and this special interrogatory should not be used.

CRIMJIG 13.58.1

HARASSMENT—ELEMENTS (NEW)

NOTE: In 2020, the Minnesota Legislature enacted a number of changes to Minn. Stat. § 609.749 effective August 1, 2020. In response, the Committee has drafted a new instruction for crimes committed on or after August 1, 2020. Be sure to use the proper instruction based upon the date the crime was committed.

Use the following instruction for Harassment crimes committed on or after August 1, 2020:

The elements of this crime are:

[1] First, the defendant, directly or indirectly, or through third parties, manifested a purpose or intent to injure the person, property, or rights of (the alleged victim) (________) by the commission of the unlawful act of ________.[1]

The elements of ________ are:

[INSERT elements of the unlawful act without date or venue.]

The defendant is not charged with ________ in this case. I have read the elements of that offense because the crime of harassment requires as part of this element that the defendant committed the unlawful act.

[2] First, the defendant followed, monitored or pursued (the alleged victim) (________), in person or through any available technological or other means.

[3] First, the defendant returned to the property of (the alleged victim) (________) without claim of right to the property or consent of one with authority to consent.

[4] First, the defendant repeatedly made telephone calls or sent text messages to (the alleged victim) (________), or induced (the alleged victim) (________) to make telephone calls to the defendant, whether or not conversation ensued.

[5] First, the defendant made or caused the telephone of (the alleged victim) (________) to ring repeatedly or continuously.

[6] First, the defendant repeatedly mailed or delivered or caused the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing loss, or any communication made through any available technologies or other objects.

[7] First, the defendant knowingly made false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

> **"Peace officer" means an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the Board of Peace Officer Standards and Training, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest [, and also includes the Minnesota State Patrol, agents of the Division of Alcohol and Gambling Enforcement, state conservation officers, Metropolitan Transit police officers, Department of Corrections Fugitive Apprehension Unit officers, and Department of Commerce Fraud Bureau Unit officers, and the statewide coordinator of the Violent Crime Coordinating Council] [and includes a peace officer who is employed by a law enforcement agency of a federally recognized tribe, as defined in United States Code, title 25, section 450b(e), and who is licensed by the Board of Peace Officer Standards and Training].[2]**

> **"With intent to" means that the actor either has a purpose to do the thing or cause the result specified**

or believes that the act, if successful, will cause that result.[3]

[8] **First**, the defendant used (the alleged victim's) (________'s) personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with (the alleged victim) (________).

"Personal information" means any identifier that permits communication or in-person contact with a person, including: (1) a person's first and last name, first initial and last name, first name and last initial, or nickname; (2) a person's home, school, or work address; (3) a person's telephone number, e-mail address, or social media account information; or (4) a person's geolocation data.[4]

"Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content.[5]

"Sexual act" means either sexual contact or sexual penetration.[6] **"Sexual contact" means the intentional touching of intimate parts or intentional touching with seminal fluid or sperm onto another person's body.**[7] **"Intimate parts" means the genitals, pubic area, or anus of a person, or if the person is female, a partially or fully exposed nipple.**[8] **"Sexual penetration" means any of the following acts: (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or (2) any intrusion, however slight, into the genital or anal openings of a person by another person's body part or an object used by another person for this purpose.**[9]

Second, the defendant acted with the intent to kill, injure, harass, or intimidate (the alleged victim) (________).

[1] **Third**, the defendant placed (the alleged victim) (________) in reasonable fear of substantial bodily harm.

"Substantial bodily harm" means bodily injury which

involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.[10]

[2] **Third**, the defendant placed (the alleged victim) (________) in reasonable fear that (the alleged victim's) (________'s) family or household members would be subjected to substantial bodily harm.

"Family or household members" means: (1) spouses and former spouses; (2) parents and children; (3) persons related by blood; (4) persons who are presently residing together or who have resided together in the past; (5) persons who have a child in common regardless of whether they have been married or have lived together at any time; (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and (7) persons involved in a significant romantic or sexual relationship.[11]

"Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.[12]

[3] **Third**, the defendant caused or would reasonably be expected to cause substantial emotional distress to (the alleged victim) (________).

"To cause" means to be a substantial causal factor in causing the substantial emotional distress. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening

causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the substantial emotional distress does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the substantial emotional distress. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.[13]

"Substantial emotional distress" means mental distress, mental suffering, or mental anguish as demonstrated by a victim's response to an act including but not limited to seeking psychotherapy, losing sleep or appetite, being diagnosed with a mental-health condition, experiencing suicidal ideation, or having difficulty concentrating on tasks resulting in a loss of productivity.[14]

"Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.[15]

[1] **Fourth**, the defendant's act(s) took place on (or about) ____, in ________ County.

[2] **Fourth**, the defendant's act(s) took place on (or about) ________, and at least one of the defendant's acts took place in ________ County.[16]

[3] **Fourth**, the defendant's act(s) took place on (or about) ________, and (a call was (made) (received)) ((the defendant) (the alleged victim) (________) resided) ((the alleged victim's) (________'s) designated address [in a confidentiality program] was) in ________ County.[17]

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are):]

[1] Did the defendant commit the act(s) because of (the alleged victim's) (________'s) (or) (another person's) actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin?

> ["Disability" means any condition or characteristic that renders a person a disabled person. A "disabled person" is any person who (1) has a physical, sensory, or mental impairment that materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.][18]

[2] Did the defendant commit the offense by falsely impersonating another person?

[3] Did the defendant use a dangerous weapon in any way in the commission of the offense?

> "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.[19]

> "Great bodily harm" means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.[20]

[4] Did the defendant commit the offense [with intent to influence or otherwise tamper with (a juror) (judicial proceeding)] [or] [with intent to retaliate against a (judge)

(court commissioner) (referee) (person appointed by a judge or court to hear or determine a cause or controversy) (prosecutor) (defense attorney) (officer of the court) because of that person's performance of official duties in connection with a judicial proceeding]?

"With intent to" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act, if successful, will cause that result.[21]

[5] Was (the alleged victim) (________) under the age of 18?

Was the defendant more than 36 months older than (the alleged victim) (________)?

[6] Was (the alleged victim) (________) under the age of 18?

Was the defendant more than 36 months older than (the alleged victim) (________)?

Was the defendant's act committed with sexual or aggressive intent?

[7] Did the defendant's act take place within ten years of a previous qualified domestic violence-related offense (conviction) (adjudication of delinquency)? You are instructed that ________[22] is a qualified domestic violence-related offense.[23]

[8] Did the defendant's act take place within ten years of the first of any combination of two or more previous qualified domestic violence-related offense (convictions) (adjudications of delinquency)? You are instructed that ________[24] [and ________] (is) (are) (a) qualified domestic violence-related offense(s).[25]

[For each question:] If you find the fact has been proven beyond a reasonable doubt, you should answer "yes." If you find the fact has not been proven beyond a

reasonable doubt, you should answer "no."

COMMENT

Minn. Stat. § 609.749, subds. 1b, 2, 3, 4.

Effective July 1, 2019, the term "stalking" was replaced by "harass" or "harassment" in Minn. Stat. § 609.749, except for subd. 5, which was formerly called "pattern of stalking conduct" and is now "stalking."

The prior version of the stalking-by-mail statute, formerly Minn. Stat. § 609.749, subd. 2(6), was held unconstitutional under the First Amendment by the Minnesota Supreme Court in *In re Welfare of A.J.B.*, 929 N.W.2d 840, 857 (Minn. 2019).

The prior version of the stalking-by-telephone statute, formerly Minn. Stat. § 609.749, subd. 2(4), was held unconstitutional under the First Amendment by the Minnesota Court of Appeals in *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019), *review denied* (Minn. Feb. 26, 2020).

Effective August 1, 2020, the legislature added mental state and causation elements to Minn. Stat. § 609.749 to address the First Amendment concerns of the appellate decisions.

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[1] To convict of harassment under Minn. Stat. § 609.749, the state must prove that the defendant committed an unlawful act independent of acts that constitute harassment under the statute. *See State v. Pegelow*, 809 N.W.2d 245, 248 (Minn. Ct. App. 2012).

[2] *See* Minn. Stat. § 626.84, subd. 1.

[3] *See* Minn. Stat. § 609.02, subd. 9(4).

[4] Minn. Stat. § 617.261, subd. 7(f).

[5] Minn. Stat. § 617.261, subd. 7(j).

[6] Minn. Stat. § 617.261, subd. 7(g).

[7] Minn. Stat. § 617.261, subd. 7(h).

[8] Minn. Stat. § 617.261, subd. 7(e).

[9] Minn. Stat. § 617.261, subd. 7(i).

[10] *See* Minn. Stat. § 609.02, subd. 7a.

[11] *See* Minn. Stat. § 518B.01, subd. 2(b).

[12] *See* Minn. Stat. § 609.02, subd. 7a.

[13] *State v. Smith*, 835 N.W.2d 1 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838 (Minn. 1962).

[14] Minn. Stat. § 609.749, subd. 2(4).

[15] *See* Minn. Stat. § 604.20, subd. 6.

[16] Minn. Stat. § 609.749, subd. 1b (a).

[17] *See* Minn. Stat. § 609.749, subd. 1b(b), for multiple venue provisions corresponding to different subsections of the statute.

[18] Minn. Stat. § 363A.03, subd. 12.

[19] *See* Minn. Stat. § 609.02, subd. 6.

[20] *See* Minn. Stat. § 609.02, subd. 8.

[21] *See* Minn. Stat. § 609.02, subd. 9(4).

[22] *See* Minn. Stat. § 609.02, subd. 16, for the list of qualified domestic violence-related offenses.

[23] This special interrogatory should be used only if the defendant is charged with an offense enhanced by a prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally by the defendant on the record. If the defendant stipulated to a previous qualified domestic violence-related offense, that information should not be presented to the jury, and this special interrogatory should not be used.

[24] *See* Minn. Stat. § 609.02, subd. 16, for the list of qualified domestic violence-related offenses.

[25] This special interrogatory should be used only if the defendant is charged with an offense enhanced by a prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally by the defendant on the record. If the defendant stipulated to one or more previous qualified domestic violence-related offenses, that information should not be presented to the jury, and this special interrogatory should not be used.

CRIMJIG 13.59

STALKING—DEFINED *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever engages in stalking with respect to a single victim or one or more members of a single household in a manner the defendant knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm, and which causes this reaction on the part of the victim, is guilty of a crime.

COMMENT

Minn. Stat. § 609.749, subd. 5.

Effective July 1, 2019, the term "stalking" has been replaced by "harass" or "harassment" in Minn. Stat. § 609.749, except for subd. 5, which was formerly called "pattern of stalking conduct" and is now "stalking."

CRIMJIG 13.60

STALKING—ELEMENTS *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant engaged in stalking. "Stalking" means two or more criminal acts[1] within a five-year period.

The state seeks to meet this element by proving the criminal act of ________ on ________ and the criminal act of ____________________ on ________.

The elements of ________ are:

[INSERT elements of the underlying criminal acts without date or venue.][2]

The defendant is not charged with ________ [or ________] in this case. I have read the elements of (that offense) (those offenses) because the crime of stalking is proven only if you find the defendant committed two or more criminal acts within a five-year period.

[When more than two criminal acts are alleged, in order to find that the state has satisfied this element, you must unanimously find that that at least two criminal acts were proven beyond a reasonable doubt, but you need not agree as to which criminal acts were proven beyond a reasonable doubt.][3]

Second, the defendant engaged in this conduct with respect to (the alleged victim) (________) (one or more members of a single household).[4]

Third, the defendant knew or had reason to know that (the alleged victim) (________) (at least one member of the household) would feel terrorized or would fear bodily harm.

"To feel terrorized" means to experience extreme fear due to violence or threat.[5]

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.[6]

"To know" requires only that the actor believes that the specified fact exists.[7]

Fourth, (the alleged victim) (________) (at least one member of the household) felt terrorized or feared bodily harm as a result of the defendant's conduct.

Fifth, the defendant's acts took place on (or about) ________, [and ________,] and at least one of the defendant's acts took place in ________ County.[8]

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.749, subd. 5.

Effective July 1, 2019, the term "stalking" has been replaced by "harass" or "harassment" in Minn. Stat. § 609.749, except for subd. 5, which was formerly called "pattern of stalking conduct" and is now "stalking."

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[1] The predicate acts must violate or attempt to violate the provisions of the statutes listed in Minn. Stat. § 609.749, subd. 5(b), or any similar law of another state, the United States, the District of Columbia, a Tribe, or United States territory. The trial judge should instruct the jury further on the elements of each of the underlying alleged predicate acts.

[2] The jury instructions for stalking must include the elements of the underlying criminal acts that constitute the pattern. *See State v. Richardson*, 633 N.W.2d 879, 885–86 (Minn. Ct. App. 2001) (examining previous version of the statute).

[3] With other statutes that require two or more predicate acts, the Minnesota Supreme Court has held that the jury need not unanimously agree on the two or more acts, so long as the jury agrees that the state has proven some combination of at least two acts beyond a reasonable doubt. *State v. Johnson*, 773 N.W.2d 81, 86–87 (Minn. 2009) (first-degree child abuse murder and domestic abuse murder); *see State*

v. Bustos, 861 N.W.2d 655, 661 (Minn. 2015) ("[W]hen the State alleges prior acts in excess of what is necessary to prove a past pattern, not all of the prior acts need to be proven beyond a reasonable doubt because no one predicate act is an element of the offense.").

[4] The statute does not define "member of the household." In the absence of statutory inclusion by reference or governing case law, the committee does not recommend using the definition of a similar statutory phrase found in Chapter 518B. *See* Minn. Stat. § 518B.01, subd. 2(b).

[5] *State v. Franks*, 765 N.W.2d 68, 74 (Minn. 2009).

[6] Minn. Stat. § 609.02, subd. 7.

[7] Minn. Stat. § 609.02, subd. 9(2).

[8] Minn. Stat. § 609.749, subd. 1b (a).

CRIMJIG 13.66

DEFENSE TO HARASSMENT AND STALKING *[Retitled]*

Replace the current Jury Instruction and Comments with the following text and Comments:

The defendant asserts a defense to the crime of (harassment) (stalking).

The defendant has been charged with (harassment) (stalking). It is a defense to this charge if the defendant's act(s) (was) (were) (performed under the terms of a valid license) (performed to ensure compliance with a court order) (performed to carry out a specific lawful commercial purpose or employment duty) (authorized or required by a valid contract) (authorized, required, or protected by state, federal, or tribal law or the state, federal, or tribal constitutions).[1]

To prove guilt, the state must prove beyond a reasonable doubt that the defendant's act(s) (was) (were) not (performed under the terms of a valid license) (performed to ensure compliance with a court order) (performed to carry out a specific lawful commercial purpose or employment duty) (authorized or required by a valid contract) (authorized, required, or protected by state, federal, or tribal law or the state, federal, or tribal constitutions).

COMMENT

Minn. Stat. § 609.749, subd. 7.

Effective July 1, 2019, the term "stalking" has been replaced by "harass" or "harassment" in Minn. Stat. § 609.749, except for subd. 5, which was formerly called "pattern of stalking conduct" and is now "stalking."

The statute provides that conduct is not criminal if it is performed under the provisions of this subdivision. The Committee is of the opinion that if the defendant raises this issue, it is the burden of the state to prove beyond a reasonable doubt the absence of this defense. *See State* *v. Taylor*, 594 N.W.2d 533, 535 (Minn. Ct. App. 1999) (holding that statutory exceptions are also affirmative defenses for which the defendant has a burden of production, with the state holding the ultimate burden of proving the statutory violation).

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[1] Minn. Stat. § 609.749, subd. 2(2), "does not impair the right of any individual or group to engage in speech protected by the federal, state, or tribal constitutions, or federal, state, or tribal law, including peaceful and lawful handbilling and picketing." Minn. Stat. § 609.749, subd. 7.

CRIMJIG 13.68

MISTREATMENT OF PERSONS CONFINED—CHILD—ELEMENTS

n. 2.

Replace footnote two with the following text:

See Minn. Stat. § 626.556, subd. 2(c) for the definition of "facility."

CRIMJIG 13.71

SEXUAL ABUSE—(RESIDENT) (PATIENT) (CLIENT)—DEFINED

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever is a caregiver, facility staff person, or person providing services in a facility and engages in sexual contact or sexual penetration with a resident, patient, or client of a facility, is guilty of a crime.

COMMENT

Minn. Stat. § 609.2325, subd. 1(b).

CRIMJIG 13.72

SEXUAL ABUSE—(RESIDENT) (PATIENT) (CLIENT)—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant was a caregiver, facility staff person, or a person providing services in a facility. A "caregiver" is an individual or facility having responsibility for the care of a vulnerable adult as the result of a family relationship, or having assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract or by agreement. A facility is.[1]

Second, ________ was a resident, patient, or client of the facility.

Third, the defendant engaged in sexual penetration or sexual contact with ________.

[1] Sexual intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis into the female genital opening.

[2] Fellatio constitutes sexual penetration if there is any contact between the penis of one person and the mouth, tongue, or lips of another person.

[3] Cunnilingus constitutes sexual penetration if there is any contact between the female genital opening of one person and the mouth, tongue, or lips of another person.

[4] Anal intercourse constitutes sexual penetration if there is any intrusion, however slight, of the penis of one person into the anal opening of another person.

[5] Any intrusion, however slight, of any part of one

person's body (or of any object used by one person) into the genital or anal openings of another person's body constitutes sexual penetration.

Emission of semen is not necessary to accomplish sexual penetration.

"Sexual contact" means the defendant intentionally touched ________'s intimate parts or the clothing over the immediate area of ________'s intimate parts, or effected the touching of ________'s intimate parts or the clothing over the immediate area of ________'s intimate parts by coercion or the use of a current or recent position of authority.[2]

> **The intimate parts of the body include the genital area, groin, inner thigh, buttocks, and breast.**
>
> **A person in a "current or recent position of authority" includes, but is not limited to, any person who is a parent or is acting in the place of a parent and is charged with or assumes any rights, duties, or responsibilities of a parent, or a person who is charged with or assumes any duty or responsibility for the health, welfare or supervision of a child, either independently or through another, no matter how briefly, at the time of the act or within 120 days immediately before the act.[3]**

Fourth, the defendant's act took place on (or about) ________, in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.2325, subd. 1(b).

Minn. Stat. § 609.341 defines sexual penetration and sexual contact.

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[1] See Minn. Stat. § 609.232, subd. 3, for further definition of "facility."

[2] Legislation effective for crimes committed on or after August 1, 2019, changed "position of authority" to "current or recent position of authority" and expanded the corresponding definition.

[3] Minn. Stat. § 609.341, subd. 10.

CRIMJIG 13.85

MALICIOUS PUNISHMENT OF A CHILD—ELEMENTS

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant intentionally committed an act or series of acts with respect to a child evidencing unreasonable force or cruel discipline that is excessive under the circumstances.

> **Unreasonable force is such force as would appear to a reasonable person to be excessive under the circumstances. The word "cruel" may be taken as having its common, ordinary meaning. [It is recommended that CRIMJIG 13.86, permitted use of reasonable force toward a child, be used at this time.]**

Second, the defendant's relationship to (the alleged victim) (____) was that of (parent) (legal guardian) (caretaker). (A parent may be either biological or adoptive.) (A legal guardian is one who has been judicially appointed.) (The term "caretaker" means an individual who has responsibility for the care of a child as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of the child.)

Third, (the alleged victim) (____) was a child who had not reached (his) (her) eighteenth birthday at the time of the defendant's act(s).

Fourth, the defendant's act(s) took place on (or about) ____, in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in the form of (a) question(s) on the verdict form.[1] The question(s) (is) (are):

Did (the alleged victim) (_____) sustain great bodily harm? "Great bodily harm" means bodily injury that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.[2]

Did (the alleged victim) (_____) sustain substantial bodily harm? "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member.[3]

Did (the alleged victim) (_____) sustain bodily harm to the head, eyes, or neck, or otherwise suffer multiple bruises to the body? "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.[4]

Was (the alleged victim) (_____) under the age of four years?

Did the defendant's act take place within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency?

[For each question:] If you find the fact has been proven beyond a reasonable doubt, you should answer "yes." If you find the fact has not been proven beyond a reasonable doubt, you should answer "no."

COMMENT

Minn. Stat. § 609.377.

The Court of Appeals, in *State v. Broten*, 836 N.W.2d 573, 576–77 (Minn. Ct. App. 2013), held that the phrase "unreasonable force or cruel discipline" is disjunctive and therefore there is no requirement, under the statute, to prove bodily harm.

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[1] Special verdict forms should include only the enhancing factors that correspond to the crime(s) charged in the complaint or expressly permitted as a lesser-included offense.

[2] Minn. Stat. § 609.02, subd. 8.

[3] Minn. Stat. § 609.02, subd. 7a.

[4] Minn. Stat. § 609.02, subd. 7.

CRIMJIG 13.93

CHILD ENDANGERMENT—EXPOSURE TO CONTROLLED SUBSTANCES—DEFINED

Replace current Jury Instruction with the following text and Comment:

Under Minnesota law, a parent, legal guardian, or caretaker who endangers a child's person or health by knowingly causing or permitting the child to be present where any person is illegally selling, manufacturing, or possessing a controlled substance, or possessing immediate precursors or chemical substances with intent to manufacture a controlled substance, is guilty of a crime.

COMMENT

Minn. Stat. § 609.378, subd. 1(b)(2).

CRIMJIG 13.94

CHILD ENDANGERMENT—EXPOSURE TO CONTROLLED SUBSTANCES—ELEMENTS

Replace current Jury Instruction with the following text, Footnotes, and Comments:

The elements of child endangerment are:

First, the defendant or another person illegally (sold) (manufactured) (possessed) ____________[1] or more grams of ____________,[2] knowing or believing that the substance (sold) (manufactured) (possessed) was (a controlled substance) (possessed chemical reagents or precursors with intent to manufacture methamphetamine). ["To sell" means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, or to offer or agree to do the same, or possess with intent to do the same, or to manufacture.] ["To manufacture" means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, and their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] [Under Minnesota law, ____________,[3] along with similar substances that can be used to manufacture methamphetamine, is classified as a "chemical reagent or precursor".]

Second, the defendant knowingly caused or permitted ____________ to be present where the person was illegally (selling) (manufacturing) (possessing) (possessing immediate precursors or chemical substances with intent to manufacture) a controlled substance.

Third, the defendant's relationship to ____________ was that of (parent) (legal guardian) (caretaker). [A parent may be either biological or adoptive.] [A legal guardian is one who has been judicially appointed.] [The term "caretaker" means an individual who has responsibility for the care of a child as a result of a

family relationship, or who has assumed responsibility for all or a portion of the care of the child.]

Fourth, ________________ had not reached (his) (her) eighteenth birthday at the time of the defendant's act.

Fifth, the defendant's act took place on (or about) ________________ in ________________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Did the exposure result in substantial harm to ________________'s physical, mental or emotional health?

"Substantial physical harm" means bodily injury that involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member.[4] There is no precise definition of "substantial harm to the child's mental or emotional health." In determining whether ________________ suffered substantial mental or emotional harm, you may consider, but you are not limited to considering, any evidence showing that the defendant's conduct has resulted in behavior by ________________ of a type that would not normally be expected of ________________ and that has interfered with ________________'s normal growth and development. From all of the evidence that you have seen and heard in this case, and using your own good judgment and common sense, you must decide whether or not ________________, as a result of the defendant's conduct, suffered substantial physical, mental, or emotional harm.

You should answer the question "yes" or "no." If you have a reasonable doubt as to the answer, you should

answer the question "no."

COMMENT

Minn. Stat. § 609.378, subd. 1(b)(2).

In *State v. Perry*, 725 N.W.2d 761 (Minn. App. 2007) the Court of Appeals held "the state does not have to prove actual danger to a child's person or health as an element of the crime when a parent, legal guardian, or caretaker knows that a child is present where drugs are being sold, manufactured, or possessed."

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[1] The statute does not apply where the alleged underlying crime is a fifth-degree controlled substance crime, but only to first- through fourth-degree crimes, as well as crimes under Minn. Stat. § 152.0262. Accordingly, the threshold weight under the applicable statute should always be included in the instruction, except where "any amount" constitutes at least a fourth-degree crime. Because the endangerment statute requires a violation of one of the listed drug statutes, the instructions must include all the elements of the underlying drug crime.

[2] Identify the controlled substance, defined as such in chapter 152.

[3] List one or more of the substances defined as "chemical reagents or precursors" in Minn. Stat. § 152.0262, subd. 1(b).

[4] Definition of substantial physical harm is drawn from Minn. Stat. § 609.02, subd. 7a (defining "substantial bodily harm").

CRIMJIG 13.103

COERCION—DEFINED

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever

[1] threatens to unlawfully inflict bodily harm upon another

[2] threatens to unlawfully hold another person in confinement

[3] threatens to unlawfully inflict damage on the property of another

[4] threatens to unlawfully injure the trade, business, profession, or calling of another

[5] threatens to expose a secret or deformity or otherwise to expose any person to disgrace or ridicule

[6] threatens to publish a defamatory statement or otherwise to expose any person to disgrace or ridicule

[7] threatens to make (or cause to be made) a criminal charge, whether true or false

[8] threatens to disseminate private sexual images of another without consent[1]

and (thereby) (in that way) causes another person against his or her will to do any act or forebear doing a lawful act, is guilty of a crime.

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[1] M.S.A. § 617.261.

COMMENT

Replace the current paragraph of the Comment with the following text:

M.S.A. § 609.27.

CRIMJIG 13.104

COERCION—ELEMENTS

Replace the current Jury Instruction with the following text:

The elements of coercion are:

First, the defendant communicated a threat to ________

[1] to unlawfully inflict bodily harm on ________. "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

[2] to unlawfully hold ________ in confinement.

[3] to unlawfully inflict damage on ________, the property of ________.

[4] to unlawfully injure ________'s (trade)(business-)(profession)(calling) of ________.

[5] to expose (a secret) (a deformity) of ________, exposing ________ (or another) to disgrace or ridicule.

[6] to make to (________) (another person) a defamatory statement about ________, exposing ________ to disgrace or ridicule. A "defamatory statement" is an untrue statement about a person that would injure that person's name or reputation.

[7] to make (or cause to be made) a criminal charge of ________ against ________. (It does not matter whether the charge was true or false.)

[8] to disseminate private sexual images of ________ without ________'s consent.

Second, the defendant acted with the intent of causing ________ (to ________) (to refrain from ________).

Third, as a result of the threat, ________ (did ________

against (his) (her) will) (refrained from _______, which it was (his) (her) legal right to do).

Fourth, the defendant's act took place on (or about) _______ in _______ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty of coercion, there is an additional issue you must determine, and it will be put to you in the form of (a) question(s) on the verdict form. The question(s) (is) (are): Was the benefit received (or to be received) by the defendant or the loss suffered (or to be suffered) by _______ measurable in money? If you do not find beyond a reasonable doubt that the benefit or loss was measurable in money, you should answer this question "no." The next question(s) to be answered, if the first question is answered "yes," (is) (are): Was the value of the benefit or loss $2500 or more? Was the value of the benefit or loss more than $300 but less than $2500? Was the value of the benefit or loss not more than $300? If you have a reasonable doubt as to the value of the benefit or loss, you should answer "yes" to the lesser of the values you believe it had.

COMMENT

Replace the current paragraph of the Comment with the following text:

M.S.A. § 609.27.

CRIMJIG 13.106

THREAT OF VIOLENCE—THREAT TO COMMIT A CRIME OF VIOLENCE—DEFINED *[Retitled]*

Replace current Jury Instruction with the above new Title and the following text and Comment:

Under Minnesota law, whoever threatens, directly or indirectly, to commit a crime of violence with intent to [terrorize another] [cause evacuation of a building, place of assembly, or facility of public transportation] [cause serious public inconvenience] [or] in reckless disregard of causing [such terror] [such evacuation] [such inconvenience], is guilty of a crime.

COMMENT

Minn. Stat. § 609.713, subd. 1.

CRIMJIG 13.107

THREAT OF VIOLENCE—ELEMENTS *[Retitled]*

Replace current Jury Instruction with the above new Title, the following text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant threatened, directly or indirectly, to commit a crime of violence.

You are instructed that ________ is a crime of violence.[1]

The elements of ________ are:

[INSERT elements of the threatened crime of violence without date or venue.][2]

The defendant is not charged with ________ in this case. I have read the elements of that offense because the crime of Threat of Violence is proven only if you find the defendant threatened to commit that particular crime of violence.

It need not be proven that the defendant had the actual intention of carrying out the threat.

Second, the defendant made the threat with [intent to terrorize (another) (________) or in reckless disregard of the risk of causing such terror] [purpose to cause evacuation of a building, place of assembly, or facility of public transportation, or to cause serious public inconvenience, or in disregard of the risk of causing such evacuation or inconvenience].

["To terrorize" means to cause extreme fear by use of violence or threats.[3] "With intent to terrorize" means to have the specific purpose or intention of causing extreme fear. "In reckless disregard of the risk of causing such terror" means that the defendant, even though not having the specific purpose of terrorizing another, recklessly

risks the danger that the statements or actions would be taken as threats by another and that they would cause extreme fear. It need not be proven that (another) (________) actually experienced extreme fear.]

[“With purpose to cause evacuation or serious public inconvenience” means to have the specific purpose or intention of causing such evacuation or serious public inconvenience. “In reckless disregard of the risk of causing such evacuation or serious public inconvenience” means that the defendant, even though not having that specific purpose of terrorizing another, recklessly risked the danger that the statements would cause such evacuation or serious public inconvenience. It need not be proven that evacuation or serious public inconvenience actually occurred.]

Third, the defendant’s act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.713, subd. 1.

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[1] The threatened crime must be a “violent crime” as defined in Minn. Stat. § 609.1095, subd. 1(d). Note that this does not refer to a “crime of violence” as defined in Minn. Stat. § 624.712, subd. 5.

[2] The jury must find the defendant threatened to commit a specific predicate crime of violence, as defined by Minn. Stat. § 609.1095, subd. 1(d), and the jury must be instructed on the elements of that specific predicate offense. *State v. Jorgenson*, 758 N.W.2d 316 (Minn. Ct. App. 2008).

[3] *State v. Franks*, 765 N.W.2d 68 (Minn. 2009); *State v. Schweppe*, 237 N.W.2d 609 (Minn. 1975).

CRIMJIG 13.110

THREAT OF VIOLENCE—(REPLICA FIREARMS) (BB GUNS)—DEFINED *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever displays, exhibits, brandishes or otherwise employs a (replica firearm) (BB gun) in a threatening manner and [causes or attempts to cause terror] [acts in reckless disregard of the risk of causing terror] in another person, is guilty of a crime.

COMMENT

Minn. Stat. § 609.713, subd. 3.

CRIMJIG 13.111

THREAT OF VIOLENCE—(REPLICA FIREARMS) (BB GUNS)—ELEMENTS *[Retitled]*

Replace current Jury Instruction with the following new Title, Text, and Comment:

The elements of this crime are:

First, the defendant displayed, exhibited, brandished, or otherwise employed a (replica firearm) (BB gun) in a threatening manner. [A "replica firearm" means a device or object that is a facsimile or toy version of, and reasonably appears to be, a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher, or any other firearm. A replica firearm includes a device or object designed to fire only blanks.] [A "BB gun" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter.]

Second, the defendant [caused or attempted to cause terror] [acted in reckless disregard of the risk of causing terror] in (________) (another person). "Terror" is a condition of extreme fear.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Unlike a violation of Minn. Stat. § 609.713, subd. 1 or 2, this statute does not appear to require proof of the defendant's specific intent.

CRIMJIG 13.120

DISORDERLY CONDUCT—DEFINED

Replace current Jury Instruction with the following text and Comments:

Under Minnesota law, whoever, in a public or private place, knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger, or disturb others, or provoke an assault or breach of the peace

[1] engages in brawling or fighting,

[2] engages in offensive, obscene, abusive, boisterous, or noisy conduct, or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others,

is guilty of a crime.

COMMENT

Minn. Stat. § 609.72, subd. 1.

State v. Soukup, 656 N.W.2d 424 (Minn. App. 2003) held that self-defense is applicable to a charge of disorderly conduct where the behavior forming the basis of the offense presents the threat of bodily harm (involves a crime against the person). *See* Comment to CRIMJIG 7.05 for further discussion.

The Minnesota Supreme Court held that Minn. Stat. § 609.72, subd. 1(2) is facially unconstitutional under the First Amendment because it is substantially overbroad. *State v. Hensel*, 901 N.W.2d 166 (Minn. 2017). Because there is no reasonable narrowing construction of Minn. Stat. § 609.72, subd. 1(2), the remedy for the First Amendment violation is to invalidate the statute. *Id.*

CRIMJIG 13.121

DISORDERLY CONDUCT—ELEMENTS

Replace current Jury Instruction with the following text and Comments:

The elements of disorderly conduct are:

[1] First, the defendant engaged in brawling or fighting.

[2] First, the defendant engaged in offensive, obscene, abusive, boisterous, or noisy conduct, or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.

[If you find that the defendant's conduct consisted only of offensive, obscene, or abusive language, you must also find that the words used were "fighting words." "Fighting words" are words that constitute personally offensive epithets that, when spoken to the ordinary person, under the particular circumstances of the case, are, as a matter of common knowledge, inherently likely to provoke a violent reaction or incite an immediate breach of the peace by those to whom such words are addressed. The offense may be based upon the utterance of fighting words alone, without resulting in actual violence. The focus is upon the nature of the words and the circumstances in which they were spoken, rather than upon the actual response.]

Second, the defendant knew, or had reasonable grounds to know, that the conduct would, or could, tend to (alarm) (anger) (disturb) (provoke an assault by) (provoke a breach of the peace by) others.

Third, the defendant's act took place in a public or private place.

Fourth, the defendant's act took place on (or about) ____ in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Although the statute proscribes language that is offensive, obscene, or abusive if it tends reasonably to arouse alarm, anger, or resentment in others, the Minnesota Supreme Court has upheld its constitutionality only when applied to "fighting words." *City of Little Falls v. Witucki*, 295 N.W.2d 243 (Minn. 1980); *State v. White*, 292 N.W.2d 16 (Minn. 1980); *Matter of the Welfare of S.L.J.*, 263 N.W.2d 412 (Minn. 1978); *City of St. Paul v. Mulnix*, 304 Minn. 456, 232 N.W.2d 206 (1975); *State v. Korich*, 219 Minn. 268, 17 N.W.2d 497 (1945).

If the alleged criminal conduct consists of the use of words alone, the trial court must include the bracketed portion under the first element in order to withstand constitutional challenge. If the defendant's conduct consists only of physical acts, the bracketed portion need not be read. In those cases where the defendant is accused of both physical acts and words, the bracketed portion in the instruction should be read in order to fully protect the defendant's right to freedom of speech. In *In re Welfare of T.L.S.*, 713 N.W.2d 877 (Minn. Ct. App. 2006), the Minnesota Court of Appeals held that if the defendant's conduct consists of the delivery of speech which is disorderly because of its boisterous or noisy manner and not because of the content of the speech, the statute may be applied to words that are not "fighting words." If the alleged criminal conduct consists of noisy conduct, the trial court should consider whether the bracketed portion should be read.

In *City of Little Falls v. Witucki*, 295 N.W.2d 243 (Minn. 1980), the Supreme Court distinguished the nature of the words spoken and the circumstances in which they were spoken from the actual response of the person to whom they are spoken. Thus, that part of the bracketed portion under the first element, which states that violence need not result in order for language to be within the fighting words category of unprotected speech, is included. "The actual response of the addressee or object of the words is relevant, but not determinative, of the issue of whether the utterances meet the fighting words test."

The Minnesota Supreme Court held that Minn. Stat. § 609.72, subd. 1(2) is facially unconstitutional under the First Amendment because it is substantially overbroad. *State v. Hensel*, 901 N.W.2d 166 (Minn. 2017). Because there is no reasonable narrowing construction of Minn. Stat. § 609.72, subd. 1(2), the remedy for the First Amendment violation is to invalidate the statute. *Id.*

B. PROPERTY CRIMES

CHAPTER 16

THEFT AND RELATED OFFENSES

CRIMJIG 16.02

THEFT—TAKING PROPERTY OF ANOTHER—ELEMENTS

Replace the current Jury Instruction with the following text, Footnote, and Comments:

The elements of theft are:

First, the ____ alleged to have been (taken) (used) (transferred) (concealed) (retained) was the property of (____) (a person other than the defendant).

Second, the defendant intentionally (took) (used) (transferred) (concealed) (retained) the ____. This means that the defendant (took) (used) (transferred) (concealed) (retained) the ____ on purpose, and that the defendant knew or believed that it was the property of another person. ["Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result.[1]]

Third, the defendant knew that (he) (she) had no right to take the ____. "To know" requires only that the actor believes that the specified fact exists.

Fourth, (____) (the owner of the ____) did not consent to the defendant's taking it.

Fifth, the defendant intended to deprive the owner permanently of the possession of the ____ (or believed that the act would deprive the owner permanently of possession).

Sixth, the defendant's act took place on (or about) ____ in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See CRIMJIG 16.76 to 16.83 for issues of value and nature of the property.

In *State v. Gage*, 272 Minn. 106, 136 N.W.2d 662 (1965), the Supreme Court held that a defendant did not intend to deprive the owner of possession if the defendant believed the owner abandoned the property.

In *State v. Fernow*, 354 N.W.2d 438 (Minn. 1984), the Supreme Court held that the trial court should have instructed the jury in a manner consistent with this instruction, but failure to do so in that case was not prejudicial error.

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[1] "Intentionally" is defined in M.S.A. § 609.02, subd. 9(3).

CRIMJIG 16.06

THEFT—DECEPTION BY FALSE REPRESENTATION (INCLUDING THEFT BY CHECK)—ELEMENTS

Replace the current Jury Instruction with the following text, Footnote, and Comments:

The elements of theft are:

First, the defendant obtained the (possession) (custody) (title) of ________.

Second, ________ was the property of (________) (another).

[1] Third, the defendant intentionally made a false representation to ________ for the purpose of obtaining the ________.

Fourth, the defendant knew that the representation was false. "To know" requires only that the actor believes that the specified fact exists.

Fifth, the defendant made the false representation with intent to defraud. "To defraud" means to deceive another to gain some material advantage.

Sixth, ____ was defrauded and gave the defendant (possession) (custody) (title) to the ____.

[2] Third, the defendant intentionally issued a (check) (________) to ________ in order to obtain the ________.

Fourth, the defendant knew that (he) (she) was not entitled to issue such a (check) (________). "To know" requires only that the actor believes that the specified fact exists.

Fifth, at the time of issuing the (check) (________), the defendant intended to defraud ________ by intending that

the check never be paid. “To defraud” means to deceive another to gain some material advantage.

Sixth, the defendant intended that ________ be permanently deprived of the property.

Seventh, the defendant intended that ________ believe that the defendant was entitled to issue the (check) (________).

Eighth, ________ believed that the defendant was entitled to issue such a (check) (________) and, in reliance on such (check) (________), gave the defendant (possession) (custody) (title) of the ________.

[3] Third, the defendant intentionally made a promise to ________ to ________[1] in order to obtain the ________.

Fourth, the defendant intended at the time (he) (she) made the promise that (he) (she) would not perform the promise. In order to find that the defendant did not intend to perform the promise, it is not enough that you find that it was not performed; failure to perform is not evidence of intent not to perform unless corroborated by other substantial evidence.

Fifth, the defendant intended that ________ believe that the defendant intended to perform the promise.

Sixth, ________ believed that the defendant intended to perform the promise and, in reliance on such promise, gave the defendant (possession) (custody) (title) of the ________.

[4] Third, the defendant intentionally prepared or filed a (claim for reimbursement) (rate application) (cost report) used to establish a rate or claim for payment for medical care provided to a recipient of medical assistance.

Fourth, the defendant knew that the (claim for reimbursement) (rate application) (cost report) falsely stated the costs of or other actual services provided by (________)

(the vendor of medical care). "To know" requires only that the actor believes that the specified fact exists.

Fifth, the defendant intended that ________ believe that the (claim for reimbursement) (rate application) (cost report) was true.

Sixth, ________ believed that the (claim for reimbursement) (rate application) (cost report) was true.

Seventh, _____ in reliance on the (claim for reimbursement) (rate application) (cost report), gave the defendant ________.

[Seventh] [Eighth] [Ninth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

For cases involving forgery, *see* CRIMJIG Chapter 19.

See CRIMJIG 16.76 to 16.83 for issues of value and the nature of the property.

In *State v. Roden*, 380 N.W.2d 520 (Minn. App. 1986), *affirmed as modified*, 384 N.W.2d 456 (Minn. 1986), the Court of Appeals approved an instruction patterned after CRIMJIG 16.06.

If a violation of M.S.A. § 609.535 is alleged, CRIMJIGs 16.07 and 16.08 should be given instead.

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[1] The action alleged to have been promised.

CRIMJIG 16.07

THEFT—ISSUANCE OF WORTHLESS CHECK—DEFINED

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever issues any check (or draft, order of withdrawal, or similar negotiable or nonnegotiable instrument) that, at the time of issuance, the issuer intends shall not be paid, is guilty of a crime.[1]

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[1] Note that under M.S.A. § 609.535, subd. 5, this statute does not apply to a post-dated check or to a check given for a past consideration. *See State v. Schouweiler*, 887 N.W.2d 22 (Minn. 2016) (holding that a check is issued for "a past consideration" when issuer received any goods or services in the past, even if some goods and services will be received in the future).

CRIMJIG 16.08

THEFT—ISSUANCE OF WORTHLESS CHECK—ELEMENTS

COMMENT

Add the following text at the end of the second paragraph of the Comment:

See State v. Schouweiler, 887 N.W.2d 22 (Minn. 2016) (holding that a check is issued for "a past consideration" when issuer received any goods or services in the past, even if some goods and services will be received in the future).

CRIMJIG 16.12

THEFT—LOST PROPERTY—ELEMENTS

Replace the current Jury Instruction with the following text, Footnote, and Comments:

The elements of theft are:

First, the defendant appropriated ________, the lost property of (________) (another person). If (________) (the owner) discarded the ________, intending to abandon all claim or interest in it, the ________ was not ________'s property.

Second, the defendant knew that the ________ was the lost property of another. "To know" requires only that the actor believes that the specified fact exists.

Third, the defendant knew the identity of the owner or knew that by reasonable means (he) (she) could discover the identity of the owner.

Fourth, the defendant failed to make a reasonable effort to find the owner and to (return) (offer and surrender)[1] the ________ to the owner.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.52, subd. 2(6).

See CRIMJIGs 16.76 to 16.83 for issues of value and nature of the property.

A person is not entitled by law to insist that a reward be paid for the return of lost property or to withhold the return of such property unless a reward is given. If the elements of the crime of theft have been proven, it is no defense that the defendant offered to return the property for a reward. *State v. Simonson*, 298 Minn. 235, 214 N.W.2d 679 (1974).

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[1] Although the committee believes the term "return" is a sufficient plain-language explanation of what is required, "offer and surrender" is the phrase used in the statute.

CRIMJIG 16.14

THEFT—VENDING MACHINE—ELEMENTS

Replace the current Jury Instruction with the following text and Comments:

The elements of theft are:

First, the alleged to have been obtained by the defendant was available upon the deposit of money or tokens in (a coin or token operated machine) (a vending machine) (another receptacle).

Second, the defendant intentionally obtained the without making the required deposit. This means that the defendant acted with the purpose of obtaining the without making the required deposit, and that the defendant knew that the ________ was offered only on the condition that the deposit be made. "To know" requires only that the actor believes that the specified fact exists. (The defendant did not make the required deposit if the defendant knowingly used counterfeit money or token, or a slug.)

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.52, subd. 2(7).

See CRIMJIGs 16.77 to 16.83 for issues of value and nature of the property.

CRIMJIG 16.22

THEFT—MOTOR VEHICLE—ELEMENTS

COMMENT

Add the following text as the first paragraph to the Comment:

The word "takes" in the motor-vehicle-theft statute, Minn. Stat. § 609.52, subd. 2(a)(17) required only adverse possession of a vehicle. One does not need to move a vehicle to "take" it. *State v. Thonesavanh*, 904 N.W.2d 432 (Minn. 2017).

CRIMJIG 16.32

THEFT OF CORPORATE PROPERTY—ELEMENTS

Replace the current Jury Instruction with the following text and Comment:

The elements of theft are:

First, the defendant diverted (________) (corporate property) away from the corporation.

Second, the diversion of the (________) (corporate property) was not in accordance with general business purposes or was for purposes other than those specified in the corporation's articles of incorporation.

Third, the defendant acted with an intent to defraud. "To defraud" means to deceive another to gain some material advantage.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See CRIMJIGs 16.76 to 16.83 for issues of value and the nature of the property.

CRIMJIG 16.34

UNAUTHORIZED DISTRIBUTION OF CORPORATE PROPERTY—ELEMENTS

Replace the current Jury Instruction with the following text, Footnote, and Comment:

The elements of theft are:

First, the defendant authorized or caused (a corporation) (________) to make a distribution.

Second, the distribution (made the corporation unable to pay its debts in the ordinary course of business after the distribution) (________).[1]

Third, the defendant acted with an intent to defraud. "To defraud" means to deceive another to gain some material advantage.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See CRIMJIGs 16.76 to 16.83 for issues of value and the nature of the property.

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[1] M.S.A. § 609.52, subd. 2(16), refers to a "violation of M.S.A. § 302A.551 or any other state law in conformity with it." Therefore, the instruction may have to be modified to the specific statute involved in the charge.

CRIMJIG 16.60

FINANCIAL TRANSACTION CARD FRAUD—PROVIDER FRAUD—ELEMENTS

Replace the current Jury Instruction with the following text and Comment:

The elements of financial transaction card fraud are:

First, the defendant was authorized by (————) (an issuer) to furnish (money) (goods) (services) (anything of value) upon presentation of a financial transaction card or account number of a financial transaction card. [A "financial transaction card" is any instrument or device, whether known as a credit card, credit plate, charge plate, courtesy card, bank services card, banking card, check guarantee card, debit card, electronic benefit system (EBS) card, electronic benefit transfer (EBT) card, or assistance transaction card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining credit, money, goods, services, or anything else of value.] [An "issuer" is a person, firm, or duly authorized agent that issues a financial transaction card.]

[1] Second, the defendant furnished to (————) (another), (money) (goods) (services) (anything of value) upon the presentation of a financial transaction card.

Third, at the time the defendant furnished the (money) (goods) (services) (anything of value), the defendant knew the card was (forged) (expired) (revoked) (presented by a person who did not have authority to use the card).

[2] Second, the defendant represented in writing to the issuer that the defendant had furnished to (————) (the person presenting the card) (money) (goods) (services) (anything of value).

Third, the defendant had not in fact furnished to the person presenting the card the (money) (goods) (services) (anything of value).

Fourth, the defendant's act was done with the intent to defraud the issuer. "To defraud" means to deceive another to gain some material advantage.

Fifth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See CRIMJIG 16.76 to 16.83 for issues of value and the nature of the property.

CRIMJIG 16.64

FINANCIAL TRANSACTION CARD FRAUD—FALSE THEFT REPORT—ELEMENTS

Replace the current Jury Instruction with the following text and Comment:

The elements of financial transaction card fraud are:

First, the defendant notified (________) (an issuer) (a person) of a (theft) (loss) (disappearance) (non-receipt) of a financial transaction card. [A "financial transaction card" is any instrument or device, whether known as a credit card, credit plate, charge plate, courtesy card, bank services card, banking card, check guarantee card, debit card, electronic benefit system (EBS) card, electronic benefit transfer (EBT) card, or assistance transaction card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining credit, money, goods, services, or anything else of value.] [An "issuer" is a person, firm, or duly authorized agent that issues a financial transaction card.]

Second, the notification was false.

Third, at the time the defendant gave the notice, the defendant intended to defraud. "To defraud" means to deceive another to gain some material advantage.

Fourth, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Did the defendant obtain any property other than a

financial transaction card? You will answer this question "yes" or "no." If you have a reasonable doubt as to the answer, you will answer "no."

COMMENT

If the jury answers this special question "yes," the statute provides that the sentence that may be imposed for the violation is determined in the manner of M.S.A. § 609.52, subd. 3. Accordingly, the relevant instructions of CRIMJIGs 16.76 to 16.83 should be given.

CRIMJIG 16.71

INSURANCE FRAUD—ELEMENTS

Replace the current Jury Instruction with the following text and Comments:

The elements of defrauding an insurer are:

[1] First, the defendant presented, caused to be presented, or prepared with knowledge or reason to believe that it would be presented, by or on behalf of an insured, claimant, or applicant to an insurer, insurance professional, or premium finance company in connection with an insurance transaction or premium finance transaction, any information that contained a false representation as to any material fact, or that concealed a material fact concerning (an application for, rating of, or renewal of, an insurance policy) (a claim for payment or benefit under an insurance policy) (a payment made according to the terms of an insurance policy) (an application used in a premium finance transaction).

[2] First, the defendant presented, caused to be presented, or prepared with knowledge or reason to believe that it would be presented, to or by an insurer, insurance professional, or a premium finance company in connection with an insurance transaction or premium finance transaction, any information that contains a false representation as to any material fact, or that conceals a material fact, concerning (a solicitation for sale of an insurance policy or purported insurance policy) (an application for certificate of authority) (the financial condition of an insurer) (the acquisition, formation, merger, affiliation, or dissolution of an insurer).

[3] First, the defendant solicited or accepted new or renewal insurance risks by or for an insolvent insurer.

[4] First, the defendant removed the assets or any record of assets, transactions, and affairs or any material part thereof, from the home office or other place of busi-

ness of an insurer, or from the place of safekeeping of an insurer, or destroyed or sequestered the same from the department of commerce.

[5] First, the defendant diverted, misappropriated, converted, or embezzled funds of an insurer, insured, claimant, or applicant for insurance in connection with (an insurance transaction) (the conducting of business activities by an insurer or insurance professional) (the acquisition, formation, merger, affiliation, or dissolution of any insurer).

Second, the defendant intended to defraud for the purpose of depriving another of property or for pecuniary gain. "To defraud" means to deceive another to gain some material advantage.

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 609.611, subd. 1.

See M.S.A. § 609.611, subd. 4, for a definition of terms used in the statute.

The maximum sentence that may be imposed is dependent upon the nature and the amount of loss as provided in M.S.A. § 609.52, subd. 3. *See* CRIMJIGs 16.76 to 16.83 for the appropriate instruction.

CRIMJIG 16.75

FRAUD OF HOTEL OR RESTAURANT OWNER (DEFRAUDING AN INNKEEPER)—ELEMENTS

Replace the current Jury Instruction with the following text and Comments:

The elements of fraud of a (hotel) (restaurant) owner are:

[1] First, the defendant obtained (food) (lodging) (other accommodations) at a (hotel) (restaurant).

[2] First, the defendant obtained credit for (food) (lodging) (other accommodations) at a (hotel) (restaurant).

Second, the defendant acted with intent to defraud the owner or manager. "To defraud" means to deceive another to gain some material advantage.

[In determining whether the requirement of intent has been proven beyond a reasonable doubt, you should consider all the evidence of intent. The law allows, but does not require, you to find such an intent from proof beyond a reasonable doubt of the following:

[a] the defendant obtained the services or credit for the services by false pretense, or by false or fictitious show or pretense of baggage or other property;

[b] the defendant refused or neglected to pay for the services upon demand;

[c] the defendant gave, in payment of the services, negotiable paper on which payment was refused;

[d] the defendant absconded without offering to pay for the services;

[e] the defendant surreptitiously removed or attempted to remove (his) (her) baggage.

You should consider any other relevant evidence on this matter].

Third, the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 327.75, subd. 2, sets forth the conduct that constitutes prima facie proof of fraud. Although the Committee recognizes there may be a dispute as to how the jury should be instructed regarding this provision, the bracketed language contained in the second element is recommended whenever the factual situation warrants it.

Intent to defraud must be established beyond a reasonable doubt. *State v. Higgin*, 257 Minn. 46, 99 N.W.2d 902 (1959).

The language in M.S.A. § 327.75, subd. 2, is similar to the presumption standard contained in M.S.A. § 609.535. In *State v. Williams*, 324 N.W.2d 154 (Minn. 1982), the Supreme Court, interpreting M.S.A. § 609. 535, found that due process requires that the trier of fact be able to credit or reject inferences. Thus, an instruction requiring the jury to find the presumed fact of intent was tantamount to an irrebuttable presumption that denied due process.

The Committee construes *Williams* as requiring that the jury be instructed as to the facts from which intent may, but not necessarily must, be inferred. *See also State v. Ferraro*, 290 N.W.2d 177 (Minn. 1980).

In those exceptional cases where the definition of "hotel" is at issue, the court should read M.S.A. § 327.70, subd. 3. Although the fraud statute contains no definition of "restaurant," the trial judge should refer to M.S.A. §§ 157.01 and 340.07, subds. 12 and 14 for guidance in drafting an instruction on the definition of "hotel," "restaurant," or "restaurant owner."

CRIMJIG 16.104

FINANCIAL TRANSACTION CARD FRAUD—TRAFFICKING OF SNAP BENEFITS—DEFINED *[New]*

Under Minnesota law, whoever engages in the trafficking of SNAP benefits is guilty of a crime.

COMMENT

M.S.A. § 609.821, subd. 2(9).

Research References

West's Key Number Digest
False Personation ⚷2, 7

Legal Encyclopedias
C.J.S., False Personation §§ 3, 7

CRIMJIG 16.105

FINANCIAL TRANSACTION CARD FRAUD—TRAFFICKING OF SNAP BENEFITS—ELEMENTS *[New]*

The elements of financial transaction card fraud trafficking of SNAP benefits are:

[1] First, the defendant intentionally (bought) (sold) (stole) (or) (effected an exchange) of Supplemental Nutrition Assistance (SNAP) benefits issued and accessed by an (electronic benefit transfer (EBT) card) (electronic benefit transfer (EBT) card number and personal identification number (PIN)) (or) (manual voucher and signature).

Second, the defendant acted with the intent of obtaining cash or consideration other than eligible food. "Eligible food" includes ____.[1] [It does not include ____.]

[2] First, the defendant exchanged SNAP benefits.

Second the defendant acted intentionally to exchange the benefits for (firearms) (ammunition) (explosives) (or) (controlled substances).[2] [A "firearm" is ________.[3]

[3] First, the defendant purchased a product with SNAP benefits that has a contained requiring deposit.

Second, the defendant acted with the intent of obtaining cash by intentionally discarding the product and intentionally returning the container for the deposit amount.

[4] First, the defendant purchased a product with SNAP benefits.

Second, the defendant intentionally resold the product.

Third, the defendant acted with the intent of obtaining cash or consideration other than eligible food.

[5] First, the defendant purchased products with SNAP benefits.

Second, the defendant acted with the intent of exchanging such products for cash or consideration other than eligible food.

[6] First, the defendant attempted to (buy) (sell) (steal) (or) (otherwise effect an exchange) of Supplemental Nutrition Assistance Program (SNAP) benefits issued and accessed via (an EBT card) (electronic benefit transfer (EBT) card and PIN number) (or) (manual voucher and signature).

Second, the defendant acted with intent to obtain cash or consideration other than eligible food.

[[Third] [Fourth], the defendant did so while acting in complicity or collusion with others.]

[Third] [Fourth] [Fifth], the defendant's act took place on (or about) ________ in ________ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

See CRIMJIGs 16.76 to 16.83 for issues of value and nature of the property.

Research References

West's Key Number Digest
False Personation ⚷2, 7

Legal Encyclopedias
C.J.S., False Personation §§ 3, 7

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[1] For the most recent listing, go to www.fns.usda.gov/snap/eligible-food-items. Currently it includes bread and cereals; fruits and vegetable;

meats, fish and poultry; and dairy products. The list of ineligible items is also available at this site.

[2] As defined in United States Code, title 21, section 802.

[3] *See* M.S.A. § 609.666, subd. 1(a) for the definition of a firearm.